U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446365

Date: OCT. 10, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks second preference immigrant classification as an advance degree professional, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that a waiver of the required job offer and thus of the labor certification, would not be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner initially indicated in part 5 of the petition that she intends to pursue her endeavor through employment in a variety of occupational fields, such as a "project manager, lawyer, and economist." In part 6 of the petition, she states that her job title will be "program coordinator," and that her nontechnical job description will include duties, such as "assign duties or responsibilities to project personnel. Communicate with key stakeholders to determine project." She quoted these job duties verbatim from the general job description for "project management specialists on O*NET, an employment information database sponsored by the U.S. Department of Labor. *See* https://www.onetonline.org/link/summary/13-1082.00. As such, the above passage describes the general duties of a project management specialist, but it provides no specific details about the Petitioner's proposed endeavor.

The Petitioner also submitted a letter which presents a listing of diverse areas of national concern to the United States, (e.g., international trade affairs, corporate law policy, and the promotion of women's rights and other gender-related issues), but she did not sufficiently describe her proposed endeavor. The Director concluded in her denial that the Beneficiary's prospective work within the above listed fields has substantial merit. However, we withdraw the Director's determination that the Petitioner has established the substantial merit of her proposed endeavor. The first prong in *Dhanasar*, which requires a showing of both substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake. Considering the totality of the evidence, the record does not substantiate the Petitioner's specific endeavor(s).

The Petitioner asserts that U.S. "trade policy, international trade, and international trade law are one of my areas of expertise," and discusses research projects that she embarked upon while attending graduate school. She also contends that she will make contributions to the U.S. by bringing her "intellectual analysis to enact trade policies that will foster U.S. trade relations with other countries; it will also extend to shaping the corporate law policies in the United States." She also avers that if this petition is approved, she will "volunteer[] a percentage of her time to promoting women's rights. . . [noting that she previously] volunteered to work as a women's economic empowerment program manager to change the lives of women who have given up on themselves and resorted to prostitution by planning a skills enrichment and outreach program to better their lives."

We conclude that in this case the Petitioner initially described her broad areas of experience and knowledge, but simply stating she will make contributions to our nation within these general areas of interest is insufficient to establish what her proposed endeavor will entail, and that it will have substantial merit and national importance. Importantly, the Petitioner did not discuss in sufficient detail *how* her employment as a project manager, lawyer, and economist demonstrates both substantial merit and national importance. For instance, the Petitioner states she will pursue the enactment of

"trade policies that will foster U.S. trade relations with other countries," but she did not explain how she will pursue changes in U.S. trade policy. Similarly, she alluded to pursuing employment that will enable her to "shape corporate law policies," but provided insufficient discussion of the means through which she will significantly influence this broad area of law in the United States. While she discusses some of the initiatives that she has previously been involved with to promotes women's rights and economic wellbeing, without more, her stated intent to do so on a voluntary basis also gives little insight into how her volunteer work would broadly impact the nation.

The Director issued a request for evidence (RFE), asking for more information and evidence to establish the national importance of the proposed endeavor. In response, the Petitioner submits a letter in which she asserts that her "present and future research works on U.S. corporate law and trade policies stand an enormous change to be part of policy-changing writing." Notably, the Petitioner does not offer detailed information explaining *how* she will prospectively pursue her research projects. The record does not establish the prospective capacity, if any, in which the Petitioner will be predominantly engaged in conducting research on an ongoing basis.

In denying the petition, the Director noted that the Petitioner had published research papers and had attended academic symposia, but concluded the record did not demonstrate that her multifaceted proposed endeavor would offer benefits that extend beyond her own immediate employment to impact the nation more broadly. On appeal, the Petitioner maintains that her proposed endeavor will be of national importance and asserts:

> The areas of my proposed endeavors can be subsumed under law and economics; and the economics aspect can be further divided into finance, trade, and women's economic empowerment."
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> . . . .
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> [S]ince one of my proposed endeavors is to become a legal practitioner in the United States, the research is intricately embedded because the bulk of legal practice involves research. Working as a legal practitioner itself entails researching past decided cases that are on all fours with the present issue; apt statutory authorities and legal analysis that would support a present case. . . .

On appeal, the Petitioner provides a copy of an April 2023 email from the New York State Board of Law Examiners which indicates that they received copies of her foreign documents which they are reviewing to determine if she is eligible to sit for the New York bar examination. This evidence suggests that she was not eligible to practice law in the United States at the time of filing the petition in May 2022, and may still be ineligible to do so, which raises additional questions regarding the substantive nature of her proposed endeavor. The record does not currently establish the prospective capacity, if any, in which the Petitioner will be predominantly engaged in conducting legal research on an ongoing basis.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. In *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of having national

importance because they would not impact her field more broadly. *Id.* at 893. Here, the Petitioner has not established how her individual employment would affect national employment levels or the U.S. economy more broadly consistent with national importance. While the Petitioner references labor shortages in the U.S. noting "the U.S. needs competent professionals like me in the trade, finance and professional services industries," it is important to note that labor shortages in the professional services industries do not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Additionally, the Petitioner submitted a February 2023 job offer letter from a U.S. employer in her RFE response for a position as a financial analyst. She indicates that going forward she will be working full-time in this position. Notably, her initial description of the proposed endeavor did not include any plans for prospective employment as a financial analyst. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's pursuit of employment as a financial analyst after the filing date cannot retroactively establish eligibility. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. For this additional reason, the petition may not be approved.

Nonetheless, without more information about her specific proposed endeavor and how she will apply her knowledge and expertise in the United States, the Petitioner has not sufficiently established her proposed endeavor sufficient for us to determine that her work in the United States will have substantial merit and national importance. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided sufficient information regarding her proposed endeavor, we cannot conclude that she meets either the first or second prong of the *Dhanasar* precedent. Accordingly, she has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.