U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28433885

Date: OCT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an educator, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies for the EB-2 classification as an advanced degree professional, the record did not establish that a waiver of the job offer requirement is 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national

interest waiver petitions. *Dhanasar* states that USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

II. ANALYSIS

The Petitioner proposes to work on developing strategies and methods related to early childhood development, particularly using project-based learning approaches. The Petitioner states that to further her endeavor in the United States, she intends to create a "skills development center" for children ages 5 to 12, and that she will also circulate her work through a website, by interacting with other educators, by visiting schools, and participating in conferences.

The Director determined that the proposed endeavor has substantial merit, and that the Petitioner is well-positioned to advance it. However, the Director found that the Petitioner did not establish the national importance of the proposed endeavor nor that, on balance, waiving the job offer requirement would benefit the United States. The Director did not make a finding as to the Petitioner's EB-2 qualification in the decision but stated in a request for evidence (RFE) that the Petitioner qualifies as an advanced degree professional based upon her bachelor's degree in preschool education followed by more than five years of progressive experience in the specialty.

In determining that the Petitioner did not establish the national importance of the proposed endeavor, the Director found that the industry reports and articles submitted by the Petitioner supported only the proposed endeavor's substantial merit, but not necessarily its national importance. The Director noted that in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on the specific endeavor that the foreign national proposes to undertake. The Director quoted from the Petitioner's personal statements describing her proposed endeavor and her plans to pursue it and concluded that the Petitioner did not demonstrate that the proposed endeavor stands to sufficiently extend beyond her business and the individuals she would serve to impact the industry or field more broadly. The Director also found that although the Petitioner claimed that her proposed endeavor has the significant potential to employ U.S. workers, the Petitioner did not provide evidence to support this claim.

On appeal, the Petitioner asserts that the Director mischaracterized her proposed endeavor, that the Director did not consider the entirety of the evidence in the record, and that the evidence, if properly considered under a preponderance standard, does establish the endeavor's national importance. The Petitioner also asserts that showing significant potential to employ U.S. workers can be illustrative of, but is not a requirement for, national importance.

As to the Petitioner's contention that the Director mischaracterized the proposed endeavor, the Petitioner specifically claims that the Director "reduces" the endeavor by summarizing it as intending

[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).

to "work with children 5 to 12 years of age based in the Spanish language." The Petitioner asserts that the Director characterized the endeavor as merely "working with children," in order to compare it to the classroom teaching endeavor in *Matter of Dhanasar*, which was found to not have national importance. The Petitioner also claims that the Director erred by referring to the Petitioner's proposed endeavor as her "work" and her "business," and states that her endeavor is not limited to establishing a business. The Petitioner points out that she plans to circulate her work through the field with her website, giving presentations, and training educators. But moreover, she attempts to distinguish between these ways of implementing her proposed endeavor, and the endeavor itself. The Petitioner contends that the Director incorrectly narrowed the scope of the national importance analysis by considering how the Petitioner intends to implement the proposed endeavor, rather than the proposed endeavor itself.

We appreciate the distinction that the Petitioner draws between classroom teaching and her proposed endeavor, and we understand that although the Petitioner's endeavor relates to education, she intends to pursue it through means other than traditional classroom teaching. However, we do not agree that the Director mischaracterized the Petitioner's endeavor. The Director does at one point summarize the endeavor as planning to work with children, but we do not agree that this is a misrepresentation of the proposed endeavor. Although the Petitioner makes references to other aspects of her endeavor, such as participating in conferences or working with other educators, there is little evidence in the record related to these. Instead, much of the evidence in the record focuses on the Petitioner's proposed skills development center for children and her project-based learning approach and lesson plans. Moreover, the decision quotes at length from the Petitioner's own statements, including that she intends to pursue her endeavor through her website, conferences, giving presentations, and training educators.

Additionally, we are not persuaded that the Director erred in the national importance analysis by considering how the Petitioner intends to implement her proposed endeavor. We agree that in general the focus of the first *Dhanasar* prong is on the proposed endeavor, and that—depending upon the circumstances of the case— a petitioner's specific model or plan for how to implement the endeavor may be useful in establishing the second *Dhanasar* prong, which shifts the focus from the endeavor to the petitioner, and how well-positioned they are to advance it. *See Matter of Dhanasar*, 26 I&N Dec. at 890; *see also generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

But we do not agree that the Director's consideration of the ways in which the Petitioner intends to implement her endeavor improperly limited the scope of the analysis. Indeed, the Petitioner does not explain how else we would assess the potential prospective impact of the endeavor without considering her business plan, the work she intends to do, or the other ways in which she seeks to implement her endeavor. The Petitioner summarizes her endeavor on appeal as being "to contribute and support the scholastic instruction of children to boost their education and skills, which would assist them to clarify their life goals in formation from an early age." While we agree with the Director that such an endeavor has substantial merit, this statement is not specific or detailed enough for us to assess the potential prospect impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal.

Next, the Petitioner asserts that showing significant potential to employ U.S. workers can be illustrative but is not a requirement to demonstrate national importance. We agree that the significant

potential to employ U.S. workers, or providing other positive economic effects, is only one of the ways in which national importance may be demonstrated and is not required. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. However, this claim does not demonstrate that the Director erred in finding that the record does not establish the proposed endeavor's significant potential to employ U.S. workers. The lack of potential to employ U.S. workers was not the sole basis for the Director's finding that the Petitioner did not establish national importance, and the Director did not state or imply that demonstrating potential to employ U.S. workers is necessary for establishing national importance. Rather, the Director included this analysis as one of several ways in which national importance may be, but based upon the record was not, established.

The Petitioner next claims that the denial is deficient because the Director did not consider the entirety of the evidence in the record. The Petitioner states that the failure to consider all the relevant evidence submitted has been found to be an abuse of discretion and cites to *Buletini v. INS*, 860 F. Supp. 1222, 1223 (E.D. Mi. 1994). While we agree that an adjudicator should consider the relevant evidence in the record,[2] we also note that U.S. district court decisions, such as the one the Petitioner cites, are not binding precedential authority. The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). More importantly, however, the Petitioner does not sufficiently support her claim that there was relevant evidence that the Director did not consider.

To support this claim, the Petitioner notes that the Director stated in both the RFE and in the decision that there is no evidence to illustrate the number of individuals that the Petitioner's business intends to hire, train, and support. The Petitioner contends that this demonstrates that the Director did not adequately review the evidence submitted in response to the RFE, because the RFE response explained that the national importance of the endeavor does not rely upon job creation. But as stated above, the Director included the lack of economic impact as one of several ways in which national importance was not established, and we conclude that this does not support the claim that the Director did not review the record. The Petitioner also asserts that the Director "only makes a passing remark" in the decision regarding the industry reports and articles in the record and did not analyze this evidence sufficiently. These include articles that discuss the educational approach of project-based learning and an article from the U.S. Department of Education that discusses the importance of funding early learning. The Petitioner asserts that this evidence demonstrates that the Petitioner's proposed endeavor is specifically in line with the advancement of the U.S. government objective of promoting education and building healthy and safe school environments. The Petitioner claims that this demonstrates that the Petitioner "will contribute to the greater education industry through implementing PBL [project-based learning] methodology while holistically working with every child to establish a balance between mind, body, and environment."

However, upon de novo review of the record, we agree with the Director that the articles and reports submitted by the Petitioner do not establish the endeavor's national importance. These articles provide background about the project-based learning approach and help establish the importance of early learning, but this relates only to the field of education and not to the Petitioner's specific proposed endeavor. We agree with the Director that in determining whether a proposed endeavor has national

[2] *See* 8 C.F.R. § 103.2(b)(1).

importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. As such, we conclude that the articles and reports do not establish that the Petitioner's specific proposed endeavor has national importance.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third *Dhanasar* prongs, as well as the Petitioner's eligibility for the underlying EB-2 immigrant classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant is otherwise ineligible).

III. CONCLUSION

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

ORDER: The appeal is dismissed.