U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28427702

Date: OCT. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of marketing, 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 the record did not establish that the Petitioner qualifies for the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Once a petitioner demonstrates EB-2 eligibility, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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 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. ADVANCED DEGREE PROFESSIONAL

The Petitioner does not claim to have earned a degree above a baccalaureate. By regulation, if an individual does not hold a degree above a baccalaureate, then the petitioner must submit an official academic record showing that the individual has a United States baccalaureate degree or a foreign equivalent degree, and evidence showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner claims to hold this defined equivalent of an advanced degree.

The Director concluded that the Petitioner "qualifies as a member of the professions holding an advanced degree" because she has "an undergraduate degree" and "at least five (5) years of progressive post-baccalaureate experience." The record does not support that conclusion.

A credential evaluation in the record contends that the Petitioner holds "the equivalent to [a] Master of Business Administration in Marketing" based on her undergraduate education and work experience.

USCIS may, in its discretion, consider advisory opinions as expert testimony. Nevertheless, USCIS is responsible for making final determinations of eligibility. If a submitted opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept that opinion, or may give it less weight. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (1988). In this instance, the record does not show that the evidence cited in the credential evaluation meets the regulatory requirements to show the defined equivalent of an advanced degree.

The translated academic documents in the record identify the Petitioner's course of study, but they do not appear to specify that the Petitioner actually received any degree. The evaluation states that the Petitioner "completed 5 Years of Undergraduate Programs in Speech Therapy in 2019," but it does not state that she received a degree. The Petitioner's own résumé describes her post-secondary studies as "incomplete higher education" in a "Bachelor Degree Program." The credential evaluation cites that résumé among the supporting evidence upon which the evaluator relied.

Whether or not the Petitioner received a degree from her "Bachelor Degree Program," her undergraduate studies ended in February 2019. She filed the petition in October 2020, less than two years later. Therefore, even if we were to consider the Petitioner's "5 Years of Undergraduate Programs" to be equivalent to a U.S. baccalaureate degree, she cannot have accrued five years of *post-baccalaureate* experience at the time of filing as the regulation requires. The regulations do not permit consideration of *pre*-baccalaureate experience toward the equivalent of an advanced degree.

[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).

The Petitioner must meet all requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Because the Petitioner does not hold an actual advanced degree, and she was still an undergraduate student less than five years before she filed the petition, she did not hold an advanced degree or its equivalent at the time of filing.

The Petitioner has not established eligibility for the underlying EB-2 immigrant classification.[2] Nevertheless, we will address her national interest waiver claim below, because that claim formed the basis for the Director's decision.

III. NATIONAL INTEREST WAIVER

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.

The Petitioner worked as a marketing manager for various companies in Russia from 2005 until 2019, when she entered the United States as a B-2 nonimmigrant visitor. The Petitioner filed the petition in October 2020. The Petitioner's proposed endeavor is to establish an online marketing agency "whose comprehensive portfolio will include environmental advertising, eco branding, environmental design, and environmental PR [public relations]." The Petitioner's initial submission included few details about the proposed endeavor. After the Director issued a request for evidence in September 2022, the Petitioner registered a limited liability company with the State of New Jersey in December 2022 and submitted a business plan relating to the new company.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner had shown the proposed endeavor has substantial merit, but not national importance. We agree.

The Petitioner stated that, by "being an independent business owner in the field of MARKETING in the United States, [she] will help contribute to the country's economy" by "creat[ing] additional jobs for American workers." The Petitioner discussed "federal investment . . . in climate resilience and clean energy," and asserted that her marketing agency will "help companies focused on participating in this important and ground-breaking US government initiative." Seeking to establish "the significant positive economic effect of the proposed endeavor," the Petitioner submitted a business plan for her newly-established marketing firm and a letter from a professor at [redacted] Business School.

[2] USCIS records show that, in April 2023, the Petitioner filed another Form I-140 petition on her own behalf, with receipt number [redacted] That petition was approved, granting her the same classification sought in this proceeding with a national interest waiver. The record of proceeding for the approved petition is not before us.

The Director denied the petition, stating that the Petitioner had not submitted "independent and objective evidence demonstrating that the beneficiary's proposed endeavor has potential implications that are of national importance to the U.S." The Director also concluded that the Petitioner "has not established that the proposed work has implications beyond her current employers, their business partners alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of the proposed endeavor." The Director emphasized that the burden is on the Petitioner to establish the national importance of her specific proposed endeavor, rather than the occupation, industry, or field in which she seeks employment.

On appeal, the Petitioner states that the denial notice contains "serious errors," for instance referring to her as a "software developer." This reference to the Petitioner's occupation is clearly erroneous, but the decision does not show a pattern of errors so significant as to cast the whole decision into question. The decision includes correct references to other details, such as the Petitioner's undergraduate field of study. The Petitioner asserts that the Director did not acknowledge her submission of a business plan, but the Director mentioned the business plan on page 4 of the decision.

The Petitioner contends that the "expert opinion letter" she submitted refutes many of the Director's conclusions regarding the national importance of her proposed endeavor. Portions of that letter essentially paraphrase elements of the business plan for the Petitioner's company. The letter does not discuss any specific information about the "economic effect of the proposed endeavor." Instead, it provides general information and statistics about the importance of marketing, sustainability, and entrepreneurship. This information addresses the economic effect of the entire marketing industry, not of the one company that constitutes the proposed endeavor.

At issue is not the *overall* importance of the field as a whole, but rather the "potential prospective impact" and "broader implications" of "the specific endeavor that the [Petitioner] proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. General assertions about entrepreneurship, marketing, and sustainability do not give national importance to one particular business that engages in online marketing with a focus on sustainability. It is the Petitioner's burden to show that her specific proposed endeavor would have broader implications in those areas.

Dhanasar does not state that every employment-generating endeavor has national importance. Rather, it states: "An endeavor that has *significant* potential to employ U.S. workers or has other *substantial* positive economic effects . . . may well be understood to have national importance." *Matter of Dhanasar*, 26 I&N Dec. at 890.

The burden is on the Petitioner to establish that the job creation and other economic effects of her proposed endeavor are sufficiently significant to establish national importance. The Petitioner's business plan projects a 20-person staff and revenues of $4 million in the fifth year. The Petitioner has not established the economic significance of her proposed endeavor in the context of an industry that, according to the record, employs over 100,000 people and produces roughly $50 billion in annual revenue. We agree with the Director that the Petitioner has not shown that the "limited personnel outlined in the business plan" reach this level of significance.

For the reasons discussed above, we agree with the Director's conclusion that the Petitioner has not established the national importance of her proposed endeavor.

Other claimed errors in the Director's decision relate to the discussion of the second and third *Dhanasar* prongs. But we need not address these issues. The Director's unrebutted conclusions regarding the *first* prong are sufficient to warrant denial of the petition and dismissal of the appeal, and the record does not show that the Petitioner qualifies for the underlying EB-2 immigrant classification. Therefore, addressing the Petitioner's claims regarding the second and third *Dhanasar* prongs would not affect the outcome of the appeal, and we reserve argument on those prongs.[3]

IV. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion. Also, the Director erred in determining that the Petitioner qualifies as a member of the professions holding an advanced degree, because the Petitioner has not documented her receipt of a baccalaureate degree followed by at least five years of progressive experience in the specialty in which she seeks employment.

ORDER: The appeal is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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 an applicant is otherwise ineligible).