U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446356

Date: OCT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a cross-cultural leadership specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

degree. Id. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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 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[2], 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 as a cross-cultural leadership specialist having earned a title of teaching certificate in language arts from Universidade [redacted] in Brazil and a masters of business administration from [redacted] University in the State of Georgia. The record shows she has worked in education and at the time of filing the petition was working for [redacted] University in the State of Georgia as an English as a second language instructor and as an adjunct professor teaching business and leadership courses. The Director determined that the Petitioner established her eligibility as a member of the professions holding an advanced degree. We agree with the Director's determination.

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. For the second prong of Dhanasar, the Director found that the record established that the Petitioner is well positioned to advance the proposed endeavor. However, the Director found that the record did not establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under the third prong of Dhanasar. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the

[2] 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).
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

With her petition and in a reply to a request for evidence, Counsel explains the Petitioner's proposed endeavor stating, "[The Petitioner] intends to advance her career as a [c]ross-cultural [l]eadership [s]pecialist and by doing so, develop, implement and advise . . . small and large businesses belonging to both the private and public sectors in the United States." She intends to assist U.S. companies "in managing diverse teams of different cultures, ethnicities, religions, and races." (emphasis omitted). In her professional plan, the Petitioner states she intends to ensure "that companies achieve high level production and high-quality standards in their products to bring wealth and boost the [U.S.] economy for many different industries . . . ." (emphasis omitted). She states, "I will implement my refined set of skills in the most modern strategies and techniques of [c]ross-cultural [l]eadership in order to stimulate exponential growth to organizations located in the United States."

With her reply to a request for evidence, the Petitioner provided evidence to support her eligibility for the national interest waiver as a cross-cultural leadership specialist. However, included with the reply, the Petitioner submitted printouts labeled as job opportunities, which include positions for an English as a second language instructor, an adjunct faculty teacher, a Portuguese teacher, and a sharer of education content. The Petitioner did not explain the relevance of these separate job opportunities in relation to her proposed endeavor described in her statements as a cross-cultural leadership specialist for U.S. businesses. This is important, as we held in Dhanasar that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. Since the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search, we limit our decision to the proposed endeavor stated in the petition and in Petitioner's professional plan as a cross-cultural leadership specialist to U.S. businesses. We agree with the Director that the Petitioner's proposed endeavor of being a cross-cultural leadership specialist to U.S. businesses has substantial merit.

However, the Director found that the record did not establish her proposed employment activities has the potential to extend beyond her prospective employer's business and its clients to impact her field of endeavor at a level commensurate with national importance. Therefore, the Director found that the Petitioner did not establish the national importance of her proposed endeavor, and she did not meet the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director's decision has "numerous erroneous conclusions of both law and fact." (emphasis omitted). Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner stresses that her academic knowledge and her more than 16 years of professional experience provide her with the qualifications to carry out activities related to her proposed endeavor and show its national importance. However, the Petitioner's reliance on her academic credentials and professional experience to establish the national importance of her proposed endeavor is misplaced. Her academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. See id. at 889.

The Petitioner further stresses the increasing importance of the cross-cultural leadership field to companies "in a world of globalization and heightened diversity." (emphasis omitted). She describes cross-cultural challenges to companies and how she can assist in managing diverse teams of different cultures, ethnicities, religions, and races. The Petitioner explains on appeal the economic and social welfare benefits to U.S. companies by having a diverse workforce and understanding diversity. The Petitioner restates a list from her professional plan of her proposed endeavor's activities, arguing these activities for companies show her endeavor has national importance. The Petitioner's potential activities as a cross-cultural leadership specialist for a company include, ensuring diverse employees work together; reducing employee turnover; decreasing cultural conflicts; increasing productivity; strategic management in domestic and international markets; building effective teams; helping solve internal crises; recruiting, mentoring, and training employees; providing critical skills needed to deliver results in line with a company's vision and strategy; creating internal quality practices; promoting courses and lectures related to global leadership; business communication, marketing, sales, and management; coordinating board projects; preparing professional development opportunities; leading cultural appreciation activities; creating plans for stakeholders with special needs; and assisting with marketing strategies.

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 the field more broadly. Id. at 893. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of cross-cultural leadership, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's employment as a cross-cultural leadership specialist for a U.S. business would impact the cross-cultural leadership field more broadly.

The Petitioner has not provided corroborating evidence to support her claims that her employment activities as a cross-cultural leadership specialist for a U.S. business stands to provide substantial economic and social welfare benefits to the United States. The Petitioner's claims that her proposed endeavor will benefit the U.S. economy and social welfare have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic or social welfare benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Without sufficient documentary evidence that her proposed job activities as a cross-cultural leadership specialist for a U.S. business would impact the cross-cultural

leadership field more broadly, rather than benefiting her prospective employer's business, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner argues on appeal that increased demand for cross-cultural training services has the potential to employ U.S. workers and to provide the workers with highly sought after skills and experience. She further argues that her proposed endeavor helps advance a U.S. government initiative supporting diversity in the federal government workforce. We recognize the importance of diversity in the workplace and related careers; however, working in the cross-cultural leadership field is insufficient to establish the national importance of the proposed endeavor. Instead, of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." Id. at 890. The Petitioner has not submitted evidence demonstrating that economic or job creation benefits are specifically attributable to the Petitioner's proposed endeavor.

To further support the national importance of her proposed endeavor, the record includes two opinions. An opinion from [redacted], assistant professor for [redacted] School of Business at [redacted] University in New York, indicates that the Petitioner's proposed endeavor as a cross-cultural leadership specialist is important to businesses and is in a field of national importance. The opinion explains the advantages to businesses of building diverse teams, including the promotion of economic and cultural growth for the businesses. It describes how several research studies and reports support the benefits of diversity to businesses. In finding the Petitioner's proposed endeavor has national importance, the opinion also explains how the Petitioner's professional experience in education and strategic management would support the need for cross-cultural leadership specialists. However, instead of focusing on the Petitioner's specific proposed endeavor having a prospective impact in the field of cross-cultural leadership, the opinion focuses on the importance of diversity and cross-cultural leadership and how the Petitioner's experience in education and management would be beneficial to businesses.

Another opinion from [redacted] in New York opines that the Petitioner's proposed endeavor as a cross-cultural leadership specialist by teaching at academic institutions and providing coaching to employees at U.S. businesses has national importance. However, as discussed above, the Petitioner does not indicate that her proposed endeavor includes teaching at academic institutions, and instead indicates she intends to work as a cross-cultural leadership specialist to U.S. businesses. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). The content of the opinion is lacking relevance because it discusses the importance

of education and how the Petitioner's expertise would be beneficial to her proposed teaching activities, instead of focusing on the Petitioner's indicated endeavor of providing her cross-cultural leadership services to U.S. businesses.

The Petitioner does not demonstrate that her proposed endeavor extends beyond employment activities for her prospective employer businesses to impact the field or any other industries or the U.S. economy and social welfare more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as a cross-cultural leadership specialist for a U.S. business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and social welfare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed cross-cultural leadership work and the claimed economic and social welfare results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding her eligibility under the second and third prongs of the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.