U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28050923

Date: SEP. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pipeline engineer, seeks classification as a member of the professions holding an advanced degree. 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. 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's endeavor would have national importance, that she is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement in this case. 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. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to continue working as a pipeline engineer in the oil and gas industry in the United States, either as a consultant or as an employee of an unspecified company. The Director concluded that while the Petitioner qualifies as an EB-2 professional, she does not meet any of the prongs of the *Dhanasar* test. On appeal, the Petitioner submits a brief contending that the Director violated the Administrative Procedure Act (APA) by using boilerplate language and arbitrarily disregarding the "voluminous evidence" provided.[1] Upon review, the Petitioner has not overcome the grounds of denial.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor would have national importance, we examine the specific impact of that proposed endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* In this instance, the Director concluded that while the Petitioner's endeavor has substantial merit, she did not submit sufficient evidence to establish that endeavor's national impact.

On appeal, the Petitioner submits a brief emphasizing the importance of the oil and gas industry, and states that this establishes the national importance of her endeavor. However, the importance of the Petitioner's industry relates to the merit of her endeavor, not its potential national importance, which is a separate consideration under the first prong *Dhanasar*. The pertinent question when assessing an endeavor's importance is the impact that will be specifically attributable to it. *Id.*; *see generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual (stating that an endeavor may rise to the level of national importance if it has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study).

Similarly, while the appellate brief discusses the general importance of pipeline engineers at length and notes the shortage of such workers, the importance of an endeavor is not dictated by the occupation in which a noncitizen will be employed.[2] In *Dhanasar*, the noncitizen's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. In this case, we cannot assess whether the Petitioner's work will have a nationally important impact because she has not specified a cognizable endeavor. Instead, she states

[1] The Petitioner does not cite any specific section of the APA that the Director allegedly violated. We further note that evidence is assessed by its quality, not its quantity. *Matter of Chawathe*, 25 I&N Dec. at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In adjudicating petitions pursuant to the preponderance of the evidence standard, we examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.* The Director's decision notice reflects the completion of such an analysis by specifically addressing the contents of the Petitioner's documentation.

[2] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

that she will work as an independent consultant or an employee for an unspecified company as a pipeline engineer, and does not define what actual work she will perform within the occupation of pipeline engineering. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1) (noting that an endeavor is more specific than an occupation and that petitioners should explain what specific work areas, projects, or goals their endeavor will involve). The purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search. Anyone seeking such a waiver must identify "the specific endeavor" that they propose to undertake, so that endeavor's impact can be assessed. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not done so here.

An endeavor may have national importance if it has national implications in its field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* The appellate brief claims that the underlying petition's support letters demonstrate what impact her endeavor will have on her field, but the letters do not support this assertion.[3] First, none of the letters address the Petitioner's endeavor except in the most general terms, stating that her abilities will make her a capable and valuable pipeline engineer in the future. Second, the letters' information about the Petitioner's past work does not establish that its impact extended beyond her employers to impact the broader oil and gas field. For example, the letter from L-R, of [redacted] details how the Petitioner contributed to a project which he describes as a "breakthrough in the use of solid coiled tubing in deep water." However, the only concrete impact he describes is that this technology was subsequently used in several other [redacted] projects. While the letter states that [redacted] and its project client published professional and academic articles based on the knowledge gained through that work, there is no indication that the publications influenced anyone else in the field or that any such influence could have been attributed to the Petitioner's work, given that she was not involved in writing them. Furthermore, as noted above, the Petitioner has not specified what work her endeavor will entail, and so it is not apparent that she will continue to work in the area of solid coiled tubing. In this and the other support letters provided, the writers do not specify how the Petitioner's work will have an impact on her field rising to the level of national importance.

Similar concerns apply to the claims regarding the Petitioner's role in creating and assessing training for engineers at [redacted] Contrary to the appellate brief, it is not apparent that this work will go "towards addressing the shortage of personnel and enhancing the expertise within the Oil & Gas field" on a national level, especially because the Petitioner has not specified that she will continue to work for [redacted] The materials in the record do not indicate what specific impact the Petitioner's prior training work at [redacted] will have on the oil and gas field. They also contain no information about where the Petitioner intends to work upon visa approval, whether she will act as a trainer, or who she will train in what skills. Because she has not submitted probative, relevant, and credible evidence of the nature and scope of her endeavor, the Petitioner has not established how or to what extent her endeavor will impact the national shortage of oil and gas engineers. *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner states that "[b]y being employed in such an important company, she impacts the industry through her dedication to her work there," and that "her work for a prominent company like [redacted] amplifies the significance of her contributions, as her work reaches various projects and clients." To support this claim, the Petitioner cites to *Matter of F-E-*, 2017 WL 1281865 (AAO Mar.

[3] While we do not discuss every letter submitted, we have reviewed and considered each one.

20, 2017), a case in which a metallurgical engineer established that his impact would extend beyond the mine where he worked to affect the mining industry more broadly.

First, we note that this decision was not published as precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(e). Second, the facts in *Matter of F-E-* are distinguishable from those in the current case. In *Matter of F-E-*, the noncitizen provided documentation establishing that the mine where he worked operated on such a scale that it affected the U.S. mining industry as a whole. *Matter of F-E-*, 2017 WL 1281865, at *3-4. While the Petitioner claims that [redacted] is similarly important to the oil and gas industry, she only provides documentation indicating that it is a large and profitable corporation, not that it occupies an especially influential space in the industry. Unlike the noncitizen in *Matter of F-E-*, the Petitioner has not established that her employer or work unit is so prominent that its work necessarily affects the oil and gas industry as a whole or that her proposed endeavor will specifically do the same.

Furthermore, as noted above, even if [redacted] were as prominent as the mine in *Matter of F-E-*, which the evidence does not support, the Petitioner has not specified that her endeavor would be to continue working there. Instead, she has stated that her endeavor would be to either work as an independent consultant or as an employee of an unspecified company in the oil and gas industry. As such, we decline to accept the argument that [redacted] importance to the U.S. petroleum industry will also inhere to the Petitioner's endeavor.

Finally, the noncitizen in *Matter of F-E-* provided documentation of novel mining processes he had developed, specific projects he proposed to lead to implement those processes, and the potential impact of those projects on the broader mining industry. *Id.* By contrast, the Petitioner has provided no specific information about what work her endeavor will entail beyond stating the occupation she will be employed in, and has not provided relevant, probative, and credible documentation of any specific advancement or innovation that the endeavor will bring to her field. *Matter of Chawathe*, 25 I&N Dec. at 376. She therefore has not established that her endeavor will impact her field on a level that rises to national importance.

An endeavor may have national importance if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Matter of Dhanasar*, 26 I&N Dec. at 889. The appellate brief states that the Petitioner's work increases efficiency and decreases costs for her employers, which creates various benefits for the U.S. economy due to the "interconnectedness" of the oil and gas industry. However, neither the brief nor the provided materials quantify the specific economic benefit that the Petitioner's endeavor proposes to have. The Petitioner has not established that her proposed work, specifically, will create a significant economic benefit for the United States. *Id.*

Finally, we acknowledge the petition's documentation of the Petitioner's professional abilities and accomplishments. However, these factors relate to the second prong of the *Dhanasar* test, which is concerned with the Petitioner's ability to carry out her endeavor. They do not establish what impact the endeavor would have. The Petitioner therefore has not demonstrated that her endeavor would be nationally important.

Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those issues. *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 an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* framework. As such, we conclude that she 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.