U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30636201

Date: APR. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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 a member of the professions holding an advanced degree 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that 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 be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner described the endeavor as a plan to found a "multicultural integration program to further promote the foreign languages training and knowledge of different cultures . . . focusing on the Hispanic community." The Petitioner submitted a business plan, which elaborates that the Petitioner's startup company would "operate as a cultural exchange after-school program where school-aged children will learn about other cultures and languages, complete their schoolwork, and develop their social skills." The plan indicates that, in addition to assisting attendees with their assigned homework, the startup company "will also teach children's classes about art, dance, and technology." The plan asserts the company "will offer competitive pricing as well as scholarships for students from low-income families who are interested in the programs." The plan does not, however, clarify the location in which the startup company would operate, instead generally stating that the company "will target students through [sic] the U.S., including both bilingual students and students who only speak English." The plan asserts that the Petitioner would work as the company's "coordinator and facilitator," hiring one teacher and one driver in the first year of operation, for a total of three workers, increasing to a total of 15 workers, including four teachers and tutors, respectively, two drivers, and one administrative assistant, cleaner, counselor, and marketing specialist, respectively, by the fifth year of operation.

We note that the Petitioner submitted a letter of interest from an individual who asserts she "worked for the [redacted] Board of Education as a paraprofessional from April 2016 to [the time of writing in May 2023]." The letter expresses interest in "working with [the Petitioner] as soon as possible to install one of [her] programs in our school," located in [redacted] New Jersey. However, we also note that the Petitioner informed USCIS in December 2023 that she relocated approximately 625 miles away from [redacted] New Jersey, apparently indicating that she would not pursue the proposed endeavor at the location, raising questions again regarding where the Petitioner's startup company would be located.

The Director acknowledged that the proposed endeavor "to work as a coordinator and facilitator of a multicultural integration program . . . has substantial merit." However, the Director observed that the record does not establish how the proposed endeavor would "sufficiently affect or advance the field or industry more broadly (or has wider implications in the field) at a level commensurate with national importance." The Director also observed that the record does not establish how the proposed endeavor "would somehow offer the region or its population a substantial economic benefit through employment levels, business activity, trade, or related tax revenue." The Director noted that the Petitioner's focus on her prior academic and work history, and on generalized information regarding education, childcare, and bilingualism, does not address how the proposed endeavor may have national importance. Accordingly, the Director concluded that the record does not establish how the proposed endeavor may have national importance. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner reasserts that the record establishes her proposed endeavor has national importance, specifically through the following evidence: the Petitioner's personal statements; the business plan, discussed above; publications providing generalized information regarding education, childcare, and bilingualism; and even more generally "[a]ll [e]vidence from [i]nitial [p]etition and RFE response."

In determining national 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" and "we consider its potential prospective impact," looking for "broader implications." *See Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that information in the record—whether in the Petitioner's statements, the business plan, publications, or otherwise—that discusses the Petitioner's prior academic and work history pertains to whether the Petitioner is well positioned to advance the proposed endeavor, as contemplated by the second *Dhanasar* prong. *See id.* at 888-91. However, because the Petitioner's prior academic and work history does not inform how "the specific endeavor that the [noncitizen] proses to undertake" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," her prior academic and work history is immaterial to determining whether the specific, prospective, proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong. *See id.* at 889-90.

We next note that generalized information in the record regarding education, childcare, and bilingualism—whether in the Petitioner's personal statements, the business plan, publications, or otherwise—pertains to issues such as whether the proposed endeavor has substantial merit, as contemplated by the first *Dhanasar* prong. *See id.* However, because the generalized information

does not inform how "the specific endeavor that the [noncitizen] proses to undertake" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," such generalized information does not establish how the specific proposed endeavor may have national importance, as contemplated by the first *Dhanasar* prong. *See id.*

As the Director acknowledged, the Petitioner's personal statements, the business plan, and publications providing generalized information education, childcare, and bilingualism, addressed on appeal, establish that the proposed endeavor of operating a bilingual after-school program has substantial merit. However, the record in general—and specifically in the personal statements, the business plan, and the publications—does not establish how the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have the type of broader implications contemplated by the first *Dhanasar* prong. *See id.* The bilingual after-school program appears to benefit the Petitioner, her company, the school(s) with whom the Petitioner's company may participate, the children who may attend the after-school program, and their families. However, we note that the business plan's indication that four teachers and tutors, respectively, will provide the company's instructional and childcare services within the first five years of operation, is minimal and consistent with low anticipated participation within a limited area. Relatedly, the record does not establish how the employment of a total of 15 workers, including the Petitioner, in some unspecified location, demonstrates the type of broader implications like "significant potential to employ U.S. workers" or other substantial positive economic effects, as contemplated by *Dhanasar*.

In turn, the record does not establish the particular location where the company would provide its services—whether in [redacted] New Jersey, 625 miles away, or elsewhere—nor does it establish how many other after-school childcare programs in that unspecified location already provide bilingual services, in order to determine how novel the proposed endeavor may be. Regardless of the undetermined location where the proposed endeavor may operate, the record does not establish how the company's bilingual business model may have the type of broader implications within the field of after-school childcare—or any other field—"such as those resulting from certain improved manufacturing processes or medical advances," as contemplated by the first *Dhanasar* prong. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 is otherwise ineligible).

III. CONCLUSION

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

ORDER: The appeal is dismissed.