U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30644457

Date: MAY 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chemical sales engineer and technical consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish eligibility for EB-2 classification and 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. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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.

[1] *See also 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Petitioner proposes "to offer her services as a chemical sales engineer and technical consultant in areas such as (1) chemical and biological treatment of industrial waters and waste; (2) fire, environmental, and hazard protection of facilities and equipment; and (3) industrial processes relating to chemical manufacturing and food production."

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor was of substantial merit, and we agree. However, the Director concluded that the Petitioner did not establish that her proposed endeavor had national importance.

On appeal, the Petitioner asserts that "substantial evidence was provided to establish" national importance. The Petitioner contends that her proposed endeavor "has national importance based on the potential societal health and welfare benefits to the United States (not necessarily economic benefits)." She states that: (1) her endeavor will be beneficial in "implementing quality safety practices within the Chemical Engineering Industry" reducing the number of fires and other safety hazards; (2) her knowledge of "treatment of industrial water will allow her future employers in the aforementioned industry to effectively manage the water waste derived from their operations;" and (3) her skills and experience as a technical sales engineer will "advance the techniques and strategies that will increase revenues and profitability for U.S. companies."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting her work's "potential prospective impact." While the Petitioner claims that her proposed endeavor is of national importance, she has not offered sufficient information and evidence to demonstrate that her proposed endeavor's prospective impact rises to the level of national importance. 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 his field more broadly. *Id.* at 893. Here, the record does not include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a chemical sales engineer and technical consultant offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner asserts on appeal that her proposed endeavor has significant potential to broadly enhance societal welfare. The Petitioner contends the Director improperly focused only on the potential economic impacts of her proposed endeavor, rather than its asserted benefits to societal welfare. For instance, the Petitioner asserts that her provision of industrial wastewater treatment solutions would remove containments from water and contribute to water security for industry and agriculture. She further asserts that she can facilitate the implementation of a wide range of safety practices within the manufacturing industry and, therefore, reducing injuries, employee deaths, and fire hazards. Although we agree that the Petitioner may demonstrate national importance based on the prospective societal impact of their proposed endeavor, she submits little explanation or evidentiary support as to how her proposed endeavor would impact water quality on a national level. Likewise,

the Petitioner has provided insufficient explanation and little supporting evidence to substantiate that her implementation of safety practices within the chemical engineering industry would have a potential prospective national impact on reducing the number of fires and other safety hazards within the chemical industry. Therefore, the Petitioner did not sufficiently substantiate that her proposed endeavor would have a prospective national impact on U.S. societal welfare.

The Petitioner further contends that her proposed endeavor would "offer innovations of broad implications to the U.S. business arena," particularly within the chemical industry. She asserts that by assisting companies in several industries with wastewater treatments and solutions, she will be supporting productivity, fostering economic growth, and safeguarding jobs within these sectors. However, the Petitioner does not sufficiently articulate or document these potential innovations, nor the broad implications they would have on a chemical industry, an industry she indicates includes "several hundred thousand" chemical facilities throughout the United States. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not indicate that the benefits to the regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, we reviewed the reference letters the Petitioner mentions on appeal. The authors praise the Petitioner's abilities and the personal attributes that make her an asset in the chemical industry. While they evidence the high regard the Petitioner's colleagues have for her and her work, they do not offer persuasive detail concerning the impact of her proposed endeavor or establish how such impact would extend beyond her customers. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

Finally, we reviewed the expert opinion letter from an adjunct professor at the [redacted] In addressing the first prong of the *Dhanasar* framework, we note that the author focuses on the Petitioner's over 31 years of experience in the chemical industry. However, the Petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work. The opinion letter does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in her field, has significant potential to employ U.S. workers, or that it would broadly enhance societal welfare for our nation for it to rise to the level of national importance.

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* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[2]

[2] *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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.