U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30556503

Date: MAY 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a psychologist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/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 that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

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 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). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[4] 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 states that she has more than 24 years of experience as a psychologist. She states that her professional experience includes 18 years with an armed security company where she served as human resources director and organizational psychologist, and four years as a school psychologist for students ages 11 to 14. She states that her proposed endeavor is to develop an application, to be marketed to schools in the United States, that will analyze students' personal and behavioral data to identify the probability of risk of involvement in violent behavior. She states that the data shown in the app will allow school staff to "promote actions to reduce the risk of possible attacks and protect and promote better emotional quality in this school environment."

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[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.

[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *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 asserts that she is eligible for the EB-2 classification as a member of the professions holding an advanced degree and as an individual of exceptional ability. With the initial filing the Petitioner submitted evidence of her education and experience, evidence of her claimed eligibility as an individual of exceptional ability, a personal statement describing her proposed endeavor and claimed eligibility for a national interest waiver, and recommendation and support letters.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that she qualifies for advanced degree professional classification by virtue of foreign education that she claims is equivalent to a U.S. bachelor's degree, followed by more than five years of progressive experience, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Director determined that the Petitioner was a member of the professions holding an advanced degree. After reviewing the record, we disagree with the Director's determination.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2).

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) 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 submitted certified English language translations of her academic record but did not provide copies of the original documents that were translated. Any document containing a foreign language submitted to USCIS must be accompanied by a full English language translation, as well as a certification from the translator that the translation is complete and accurate and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without both the original foreign language document and a certified English language translation, it is not possible to meaningfully determine whether the translated material is accurate and supports the Petitioner's claims.

The English language translations of her academic record include a certificate issued in the Petitioner's name by the [redacted] The certificate notes the "completion of the course of psychology in the first school term of 1998 and degree collation on August 13, 1998 [to bestow] the degree of Psychologist upon" the Petitioner. The English language translations also include an "accumulated school transcript" indicating five years of coursework, from 1992 to 1998.

The record also includes an evaluation of the Petitioner's academic credentials. The evaluation concludes that the certificate issued by the [redacted] is the equivalent of a bachelor's degree in psychology awarded by regionally accredited universities in the United States.

However, absent a copy of the Petitioner's academic record in its original language, we are precluded from determining that she is an advanced degree professional.

With the initial filing the Petitioner submitted letters from her former employers attesting to her employment as a psychologist, including:

- A letter dated August 28, 2022, from [redacted] managing partner, attesting to the Petitioner's employment with [redacted] from February 1998 to November 2018;
- A letter dated August 31, 2022, from [redacted] director, attesting to the Petitioner's employment with [redacted] from August 2015 to April 2019, and;
- A letter dated September 3, 2022, from [redacted] administrative director, attesting to the Petitioner's employment with [redacted] from March 2021 to at least the date of the letter.

In response to the RFE the Petitioner provided an additional letter from [redacted] dated July 6, 2023. In this letter, Ms. [redacted] states that the Petitioner was employed from January 1995 to February 2015, and was director of the psychology department since 1998. This letter is inconsistent with Ms. [redacted] letter dated August 28, 2022, stating that the Petitioner was employed through November 2018. Further, the Petitioner's full-time employment from 1995 overlaps with her claimed academic studies through 1998. And her employment with [redacted] through November 2018 overlaps with her claimed full-time employment with [redacted] from August 2015 to April 2019. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, at 591-92.

We also note that the Petitioner's claimed employment with [redacted] is inconsistent with a nonimmigrant visa application she submitted in January 2014. In her prior nonimmigrant visa application, the Petitioner listed her present employer as [redacted] Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* The Petitioner must resolve the inconsistencies in her employment history in any further filings.

In light of the above, we disagree with the Director's conclusion that the Petitioner has established that she is an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i). However, because the Petitioner was not on notice of these issues, this does not form the basis of our dismissal. The Petitioner must address and resolve this in any further filings.[5]

[5] The Petitioner also claims eligibility for the EB-2 classification as an individual of exceptional ability. However, the Director did not evaluate the Petitioner's evidence to determine whether she satisfies at least three of six categories of evidence listed under 8 C.F.R. § 204.5(k)(3)(ii), nor did the Director conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. We decline to make an analysis and determination on this claim in the first instance on appeal. However, should the Petitioner overcome other deficiencies noted herein in any further filings, the matter would be remanded to the Director for further consideration and analysis of the Petitioner's eligibility for classification as an individual of exceptional ability.

B. Substantial Merit and National Importance

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, she did not establish that her proposed endeavor is of national importance as set forth under the first prong of the *Dhanasar* analytical framework. We agree, for the reasons explained below.

The first 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.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated personal statement.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that her proposed endeavor had national importance. The Director stated that the record did not demonstrate that the Petitioner's particular work would have broader implications in the field or significant economic impact at a level commensurate with national importance. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, an urgent national interest in her contributions, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief, excerpts from her RFE response, and news articles discussing gun violence in the United States. The Petitioner references evidence already in the record and states that she reaffirms "that [her] project is of national importance and that [her] contribution is undeniable and totally focused on the safety of schools and students in the United States." In her brief, the Petitioner does not identify any legal or factual error in the Director's decision. Nor does she address the specific findings in the Director's denial.

In *Dhanasar*, we 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." *Matter of Dhanasar*, at 890. Although the Petitioner discusses her intention to employ 12 individuals and provides a five-year profit and loss projection, these generalized projections are not specific and detailed enough to establish the potential prospective impact of her proposed endeavor.

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.* at 889. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* "In

determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). The Petitioner continues to rely upon the asserted merits of the services she will provide, her personal and professional qualities and achievements, and the general importance of school safety. However, as set forth in the Director's decision, the evidence does not sufficiently demonstrate the proposed endeavor's national importance.

Upon review of the entire record, we adopt and affirm the Director's decision concerning the national importance of the Petitioner's proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[6] *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance. The Director noted that the Petitioner's evidence also did not demonstrate that she is well-positioned to advance her proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the supporting evidence in the decision and explained how it was deficient in establishing that the Petitioner met the *Dhanasar* factors and would be eligible for a national interest waiver.