U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30042475

Date: MAR. 8, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner is a chef who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner did not establish that she qualifies for the underlying visa classification as an individual of exceptional ability. The Director further determined she did not merit a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 an NIW, 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. Section 203(b)(2)(B)(i) of the Act.

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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (agreeing with four other Circuit Courts of Appeals).

II. NATIONAL INTEREST WAIVER

The Petitioner attained a foreign Bachelor of Arts degree focused on the plastic arts and followed that with several years of work as a chef and executive chef. As her proposed endeavor in the United States, the record at the time of filing reflected she planned to work as an executive chef for an Italian restaurant, and she would run their newly formed catering business. In response to the Director's request for evidence, she added additional work as an executive chef for a second catering company.[1]

We agree with the Petitioner that the Director committed several procedural errors when evaluating her eligibility for the EB-2 classification portion of the denial decision. However, because it appears she is also not eligible for the waiver of the job offer requirement in the national interest, it is unnecessary to remand the matter to the Director to remedy those procedural errors, as a remand would serve no purpose.

A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

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. *Dhanasar*, 26 I&N Dec. at 889. The Director decided the Petitioner satisfied the substantial merit portion of the first prong without any analysis.

When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the foreign national will work. Rather, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The endeavor must substantially benefit and "impact the field . . . more broadly" (*Id.* at 883) as "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. Ultimately, when we evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence illustrating the "potential prospective impact" of her actual proposed work. *Id.* at 889.

What the Petitioner will actually undertake is to serve as an executive chef at two businesses involved in catering. She indicates she seeks to contribute to the culinary scene by working for established

[1] The Petitioner does not explain how she plans on serving in the role of executive chef for two competing organizations at the same time, each of which is presumably a full-time position with similar operating hours. Because the Director did not address this as an adverse issue, we will not analyze this as a possible problematic topic on appeal.

entities where she will not only champion the U.S. food industry, but also push the boundaries of Italian cuisine by making innovative recipes. She further states her endeavor will contribute to Americans' health, incorporating fresh and healthy products with exquisite innovative culinary techniques. She proposes to expand the boundaries of the U.S. culinary industry by combining Italian cuisine, Mediterranean cooking techniques, and American culinary heritage.

The Petitioner indicates this will contribute to the U.S. welfare by improving the traditional American diet with features of different culinary traditions to mitigate this country's dietary-related financial burden of obesity and health risks. She further proposes her knowledge and ability related to the culinary arts and the relationship between food and culture can help further U.S. government goals related to public health and safety, poverty reduction, economic recovery, equal opportunities, and justice. Through her endeavor she plans to keep teaching and supervising culinary professionals to improve the United States' scientific progress in culinary arts and the science of gastronomy.

While this is well-meaning, it falls far short of meeting the standard of her endeavor having national importance, with the primary shortcoming being that she has not established the potential prospective impact of her work more broadly to the culinary arts field. *Id.* at 883. The Director properly focused on that aspect in the denial when they referenced the *Dhanasar* case and how his work as an educator would be limited to his students and not have broader impacts in the endeavor's field of air and space propulsion systems. However, on appeal, the Petitioner does not advance any arguments demonstrating the Director was incorrect or erred when they focused on her endeavor's impact to individual businesses and any tangential effects. Instead, she references back to her previous claims, much of which we detailed above. It is the Petitioner's burden to explain how the Director erred as it relates to this eligibility requirement, and she has not done so here. A petitioner's burden of proof comprises both the burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

Next, the Petitioner discusses a memorandum from the Department of Homeland Security issued in 2021 pertaining to public health measures and the importance that critical infrastructure workers were able to safely access their workplaces during the COVID-19 pandemic. We acknowledge that restaurant workers were included as a category of essential workers. However, as the Director-General of the World Health Organization stated on May 5, 2023, " . . . I declare COVID-19 over as a global health emergency." *WHO Declares End to COVID Global Health Emergency*, Reuters (May 8, 2023) https://www.reuters.com/business/healthcare-pharmaceuticals/covid-is-no-longer-global-health-emergency-who-2023-05-05/. Simply because the Petitioner operates in an industry that was formerly designated to include essential workers during a pandemic does not translate to those same workers holding a similar level of national importance after the health emergency subsides.

Even still, the Petitioner has not illustrated how her proposed endeavor will result in improvements broadly to the "the traditional American diet" and any ensuing negative health effects it might have. For example, she references another government-issued memorandum relating to dietary guidelines for Americans. We note however that the appeal brief attributes direct quotes from this second government memorandum that do not exist in the document (e.g., "A health equity lens is essential to ensure that the 2025-2030 Dietary Guidelines for Americans is inclusive of people from diverse racial, ethnic, socioeconomic, and cultural backgrounds."). Similar, but not exact, quotes can be found on

government websites in 2023 more than two years after the petition filing date, which the Petitioner cannot rely on in this petition. A petitioner must establish eligibility at the time the visa petition is filed. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition if the foreign national was not qualified at the priority date but relies on evidence that postdates the filing date. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Setting that aside, simply preparing food for individuals frequenting establishments where she works, and imparting knowledge to individual food preparers is limited within her industry rather than being broad as required by *Dhanasar*.

We are also not persuaded by the opinion letters the Petitioner refers to in the appeal brief. While each letter presents information related to the importance of the broader field of the "food market," neither adequately explains the impact the Petitioner's endeavor will have on the field as a whole. The argument that the Petitioner will play an important role when considering the importance of the food market field to the economy without identifying the extent of her role in those important aspects, fails to establish her endeavor here will rise to the level of national importance. We may exercise our discretion and treat opinion statements the Petitioner submits as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Additionally, where an opinion does not align with other information or is in any way questionable, we are not required to accept it, or we may give less weight to that evidence. *Id.*

We are unable to provide an example from the opinion letters that specifically argues how the Petitioner's endeavor might actually impact the broader field. The authors focus almost entirely on the positive effects of the restaurant and food services industry, as well as on the national welfare, in what appears to be their effort to stretch the point. Without conveying it outright, the authors express that the Petitioner's endeavor will serve essentially as a small tooth or a cog, on a wheel, in the vastly larger machine of the food services and health industry. Based on these shortcomings, the Petitioner has not provided outside opinions that carry sufficient weight to support her contention that the proposed endeavor is of national importance.

Ultimately, the Petitioner focuses on the occupation instead of her proposed endeavor being of national importance. These occupational improvements concentrate on the culinary arts, general economic growth, or health benefits to an altered American diet. This misplaced focus does not address the national importance requirements of the *Dhanasar* decision, nor does it adequately tie the Petitioner's endeavor to those occupational improvements.

B. Well Positioned to Advance the Proposed Endeavor

On appeal, the Petitioner asserts she meets additional eligibility requirements under the *Dhanasar* analytical framework, but she has not satisfied *Dhanasar's* necessary first prong. Because this shortcoming is dispositive of the appeal, we reserve our opinion regarding the remaining issues. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.