U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33405831

Date: SEPT. 17, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (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, 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 record did not establish the Petitioner's eligibility for the requested national interest waiver. The Petitioner subsequently filed a combined motion to reopen and motion to reconsider, which the Director dismissed. The Petitioner now appeals the Director's dismissal of the combined motions.

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. Section 203(b)(2)(B)(i) of the Act.

Once 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

Id.

II. ANALYSIS

As a preliminary matter, we emphasize that the Petitioner has not appealed the October 19, 2022, denial of the Form I-140 itself, but rather the Director's subsequent dismissal of her combined motions to reopen and reconsider dated January 12, 2024. In the January 2024 decision, the Director concluded that the motions did not meet the applicable requirements. Therefore, the question before us on appeal is whether the Director erred in dismissing the combined motions. Although the October 2022 denial is not before us, we will refer to portions of that decision for a complete review.

The Director determined that the Petitioner qualified as an advanced degree professional but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. On motion, the Petitioner submitted a letter, asking for the October 2022 decision to be reconsidered and for the Director to confirm she met the requirements for the benefit. No specific errors in the decision were noted nor was any new evidence presented. The Director then denied the motion to reopen because the Petitioner had not submitted new facts and did not demonstrate eligibility for the requested benefit. The Director also denied the motion to reconsider because the Petitioner did not articulate a specific reason for the reconsideration and did not show their decision was incorrect based on the evidence of record at the time of the initial decision. The Director then affirmed her previous decision. For the reasons set forth below, we will affirm the Director's decision.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). A motion may be granted that satisfies these requirements and demonstrates eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On appeal, the Petitioner does not address or challenge the reasons for her combined motions being dismissed. Instead, she appears to challenge the reasons for the October 2022 denial of her Form I-140 and resubmits previously submitted evidence. Thus, the Director's denial of her combined motions was appropriate.

Moreover, the Director's decision to affirm the October 2022 denial was correct. The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national

importance for example, because it has national or even global implications within a particular field." *Id.* We also 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." *Id.* at 890. Here, the Director found that the Petitioner's proposed endeavor, to open a private practice in psychotherapy, did not reach the level of national importance because the petitioner did not show the endeavor would have a substantial economic benefit nor did she show it would have a broad impact in her field, beyond her clientele. The Director cited to the projected 11 employees by year five of the private practice opening and the approximately $877,000 in revenue generated by the endeavor by year five to support the lack of prospective impact overall. We agree. The record does not establish that the Petitioner's endeavor will impact her field broadly in such a way as to be nationally important.

As the Petitioner has not met the requisite first prong of 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.