U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30636444

Date: APR. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacist, 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 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.

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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). If, however, a doctoral degree is customarily required by the profession, a noncitizen must have a United States doctorate or a foreign equivalent degree. *Id.*

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:

- 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 Director determined that the Petitioner qualifies as an advanced degree professional, but failed to establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as the endeavor falls within the range of areas we concluded could demonstrate an endeavor of substantial merit: health. *Id.* Yet, we also agree that the Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner intends to work in the United States as a pharmacist. In the professional plan submitted with the initial filing, the Petitioner stated that he intended to work in dispensing pharmacies to promote vaccinations, injections, pharmaceutical care, patient monitoring, and customer service, and to serve as a pharmaceutical manager in unnamed "pharmacy chains of national relevance" to manage the care, logistics, financial, and pharmaceutical services for these pharmacies. In his first professional plan, the Petitioner generally described the duties he would perform as a pharmacist, asserting "the pharmaceutical industry will benefit from my work by applying all my pharmaceutical knowledge," and identifying three areas of his prospective impact: pharmacy, business management, and leadership. The Petitioner also submitted multiple professional reference letters from other pharmacists in the field, commending the Petitioner's prior work in the pharmaceutical industry, and an expert opinion letter discussing the importance of the pharmaceutical industry, as well as the Petitioner's professional background.

In response to the Director's request for evidence (RFE), the Petitioner submitted a revised professional plan, which described the Petitioner's intention "to focus [his] contributions in the [pharmaceutical retail and lecturing] sectors first while planning to serve other industries in the future," without indicating what those industries may be. In the revised professional plan, the Petitioner also contended that he would impact the pharmaceutical industry specifically by implementing innovative methodologies, including prescription drug monitoring programs; medication therapy management;

[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).

patient counseling and education; medication adherence strategies; training sessions; workshops and seminars; and health literacy programs. Beyond a description of them, the Petitioner did not identify how specifically he would improve or change these existing methodologies within the industry.

The Director determined that the Petitioner did not establish the national importance of his endeavor as he did not demonstrate broader implications that could be directly attributed to his endeavor. Nor did the Petitioner sufficiently explain how he planned to execute his endeavor to impact the field as claimed. For example, the Director noted that the Petitioner did not clearly identify how his implementation of new policies would result in cost savings to the U.S. healthcare industry to an extent that would rise to the level of national importance. And the Director further concluded that any benefits from the Petitioner's proposed activities appeared to only benefit his potential employer(s) and customers, as well as any pharmacist he may manage or mentor. Moreover, the Director concluded that the Petitioner did not establish that his endeavor would result in "substantial economic effects," as contemplated in *Dhanasar*. *See Dhansar* at 890.

On appeal, the Petitioner does not individually address the Director's conclusions regarding the proposed impact of the endeavor. Instead, the Petitioner simply asserts that the Director's conclusion is inaccurate, and resubmits the same arguments previously submitted in response to the Director's RFE. The Petitioner also asserts that an evaluation of the Petitioner's past achievements is "one way to estimate the prospective impact of one's work," but this misapplies the *Dhanasar* framework. While it is true that a petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, the second prong does not evaluate the prospective impact of an endeavor, but instead "shifts the focus from the proposed endeavor to the foreign national." *Id.*

We have reviewed the record in its entirety and conclude that the Petitioner has not met his burden to establish the national importance of the proposed endeavor. We look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable services to his future employer(s) and customers, including "contribut[ing] to the education and training of future pharmacists," beyond general assertions, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. For example, in response to the Director's RFE, the Petitioner asserts that his implementation of methodologies designed to improve patient outcomes "have the potential to improve outcomes for a large number of patients across the country," and that the Petitioner's "cutting-edge approaches have the potential to set new standards and best practices in pharmaceutical care not only within the United States but also globally." But, as noted above, he does not provide further explanation of the methodologies or cutting-edge approaches such that they can be considered to extend beyond his individual employers and customers to "contribute significantly to the growth and improvement of the U.S. pharmacy field." Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

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 too, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his

potential employer(s) and customers to impact the pharmacy or healthcare field or U.S. economy more broadly at a level commensurate with national importance.

While the expert opinion letter and referenced industry reports discussing the pharmacy industry's impact on the U.S. economy and the overall health of society may demonstrate the importance of the pharmacy field, they do not mention the proposed endeavor or explain why the Petitioner's specific proposed work is nationally important. We agree that the pharmacy field is important; however, 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*. at 889.

Likewise, the expert opinion letter's reliance on an alleged shortage of pharmacists also does not establish the national importance of the Petitioner's endeavor. The national interest waiver is not intended to address labor shortages. A shortage of qualified professionals alone does not render the work of an individual pharmacist nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any pharmacist, but Congress did not provide a blanket exemption for pharmacists with respect to the job offer and labor certification requirement.[2]

Furthermore, the Petitioner has not demonstrated that his intended work as a pharmacist and/or pharmaceutical manager has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the pharmacy industry), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

III. CONCLUSION

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework, as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.

[2] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.