U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30376978

Date: APR. 4, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is an organ transplant coordinator[1] 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 of the job offer requirement attached to this classification.[2] *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center determined that despite qualifying for the underlying EB-2 visa classification as an advanced degree professional,[3] the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has substantial merit and national importance, (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States.[4] The matter is now before us on appeal pursuant to 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 withdraw the Director's determination that the Petitioner did not adequately describe her

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[1] The petition form lists the Petitioner's occupation and job title as "clinical coordinator" but in response to the Director's request for evidence she provided additional details, stating that she is an organ transplant coordinator.

[2] After a petitioner first demonstrates qualification for the underlying EB-2 visa classification, they must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner shows that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States.

[3] The record contains a degree certificate showing that the Petitioner was awarded a Master of Science degree by the [redacted] in 2019. Because the Petitioner qualifies for EB-2 eligibility as an advanced degree professional, her claim on appeal that she qualifies as individual of exceptional ability are considered moot.

[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 are discretionary in nature).

proposed endeavor and therefore did not satisfy the substantial merit element of the first prong of the *Dhanasar* analytical framework. Contrary to the Director's finding, the record shows that in response to the request for evidence (RFE) the Petitioner provided a statement describing her proposed endeavor "to be [a] member of the transplant team that works closest with the recipient of organ donations." The Petitioner also explained that her endeavor will help potential organ recipients "receive lifesaving organ donations, thereby reducing the number of people on the waiting list." Accordingly, the Petitioner demonstrated that her endeavor has substantial merit, and we will therefore withdraw the Director's adverse conclusion concerning this element of *Dhanasar's* first prong.

Notwithstanding our favorable determination regarding the substantial merit element, we will dismiss the appeal because the Petitioner did not establish that her endeavor satisfies the national importance element, which is also part of the first prong requirement of the *Dhanasar* analytical framework. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any appellate arguments regarding the second and third prongs of the *Dhanasar* analytical framework. *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).

As stated earlier, the Director reviewed and analyzed the Petitioner's claims under the three prongs of *Dhanasar* and noted that the Petitioner did not provide any supporting evidence addressing the national importance element of *Dhanasar's* first prong requirement. The Director stated that the Petitioner did not demonstrate that her endeavor will have prospective potential impact, such as broadly impacting a particular field, enhancing societal welfare, or having significant potential to employ U.S. workers or create other substantial positive economic effects.

On appeal, the Petitioner provides her clinical transplant coordinator certification and refers to her RFE response statement where she discussed her proposed endeavor. Although the Petitioner disputes the Director's conclusion regarding the national importance of her endeavor, she does not explain how her clinical transplant coordinator certification and prior discussion of the proposed endeavor adequately demonstrate that her endeavor has national importance.

In sum, the Petitioner does not offer evidence or arguments that overcome the Director's determination regarding the national importance element of the first prong of the *Dhanasar* framework.

Upon review of the entire record, we adopt and affirm the Director's decision on the issue of the national importance element of the first prong. *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 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.")

ORDER: The appeal is dismissed.