U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30470652

Date: APR. 04, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nurse practitioner specializing in hospital infection control and burn injury care, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a 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.

If 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." *Id.* 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 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Director determined, in part, that while the Petitioner's intention to work as a nurse practitioner in the United States has substantial merit, the Petitioner did not meet the first prong of the *Dhanasar* framework. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

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 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 individual's specific endeavor. In *Dhanasar*, we further 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.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Petitioner's work. *Id.* at 889. 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.

The Petitioner, who was previously employed as a nurse practitioner in Brazil, intends to continue her work in the United States. She describes her endeavor in a professional plan submitted in response to a request for evidence (RFE), stating that the document will "highlight [the Petitioner's] potential

[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).

contribution to the United States as a qualified nursing practitioner." She further states that the professional plan will "address the current staffing shortage in . . . Nurse Practitioners specialized in the burn care field and how [the Petitioner's] services will help bridge the gap in the U.S. market." The professional plan includes the following:

> [The Petitioner] is a talented professional with around 15 years of experience working in large healthcare organizations, with 12 years dedicated to treating patients with burn wounds. Serving the healthcare system, she led many projects requiring highly specialized technical and leadership skills. [The Petitioner's] impressive academic background and professional experience have allowed her to contribute to the hospitals' performance and patient well-being. She has worked through various improvements and adopted rigorous and effective infection control practices . . . .
>
> The skills and experience of [the Petitioner] will allow her to develop a set of practices that will generate business and technical efficiency and, therefore, benefit the general economy of the United States. In addition, [the Petitioner] has remarkable knowledge and experience in applying nursing and infection control principles in health organizations, allowing them to ensure safety, efficiency, quality, and fast recovery for patients, especially those with burn wounds.

The Petitioner's professional plan, as well as documentation evincing her extensive nursing experience and several letters of support lauding her skills and professionalism, relate not to the first *Dhanasar* prong addressing the national importance of a proposed endeavor, but to the second. The second prong addresses whether a petitioner is well-positioned to advance a proposed endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. While this documentation speaks to the Petitioner's qualifications as a nurse practitioner, it does not address how her intention to work as a nurse practitioner in a hospital will have a national impact.

Regarding the first *Dhanasar* prong, the Petitioner's appeal brief cites issues related to healthcare facility infections, stating the following (quoted as written):

> **Here, the national importance and impact of my work become clear:** even if I, a single nursing professional working in a hospital, can impact an entire community, or even the state or other states, if I professionally and correctly carry out prevention procedures to prevent the spread of infections in that hospital, thus preventing the spread of infectious diseases, protecting both the local population and the country.

In addition, the Petitioner—in her brief and in cover letters included in the record—cites a variety of sources discussing nursing shortages in the United States and the importance of increasing professional representation in the fields of science, technology, engineering, and math (also known collectively as STEM). The Petitioner outlines in her brief how her endeavor will offer "health solutions, employment, prosperity, and freedom" through the following (quoted as written):

> a. **Infection Control Training Programs:** Develop and implement comprehensive training programs for healthcare staff, focusing on the latest techniques and best practices in infection control.

b. **Technology Integration:** Introduce and integrate advanced technologies, such as UV disinfection robots and AI-driven predictive analytics, to monitor and prevent potential infection outbreaks.
c. **Policy and Procedure Overhaul:** Review and revise existing infection control policies to align with the latest research and best practices.
d. **Continuous Monitoring and Feedback:** Establish a system for continuous monitoring of infection rates and feedback mechanisms to ensure timely interventions.

It's not too much to realize that for this I will need to employ several other professionals like me and from different fields as well, thus offering work, prosperity, and employment to the American economy. All of this is perfectly plausible and viable, but it all stars with my work as a nurse.

The Petitioner also provides a general overview of the anticipated outcomes of her work:

a. **Efficiency and Productivity:** Reduced hospital-acquired infections will lead to shorter hospital stays, faster patient turnover, and optimized use of hospital resources.
b. **Cost Savings:** By preventing infections, healthcare institutes can avoid the high costs associated with treating such conditions, leading to significant savings in outpatient costs.
c. **Economic Benefits:** The money saved can be reinvested in expanding healthcare facilities, purchasing advanced medical equipment, and hiring more staff. This reinvestment will stimulate the U.S. economy and create job opportunities in various sectors, from construction to medical research.

The Petitioner outlines a broadly ambitious approach to her intended employment as a nurse practitioner at a hospital in the United States. However, she does not explain how her specific work as an individual nurse—and, ostensibly, as the eventual employer of other healthcare professionals—will address a national talent shortage or affect the fields of infection control, burn treatment, or the healthcare industry. Her predictions for the outcomes of her work are presumptive because they are not supported by evidence specific to the Petitioner; they are not supplemented by documentation specifying what actions she will take or what influence she will exercise to bring those outcomes to fruition.

The Petitioner also emphasizes the following in her brief (quoted as written):

> My undertake is covering social, commercial, and governmental areas with my contribution throughout of development of the national healthcare ecosystem, generation of new jobs, employment of the American workforce, being a permanent pipeline for the professional American health market, avoiding waste by saving time, labor hours, optimizing and streamlining resources, normalizing procedures to FDA, DCD, WHO and U.S government compliance and roles thus providing more wealth, freedom and prosperity, in a multipurpose way, that is, at the same time in several U.S. places.

While such a massive endeavor to improve healthcare systems and create jobs in the United States has merit, neither the Petitioner's professional plan, letters of support, nor other documentation in the record specify how the Petitioner will actualize the vague and overarching concepts that she describes here. The Petitioner must support assertions with relevant, probative, and credible evidence. She has not done so here. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376.

While the Petitioner's description of her endeavor is aspirational in the breadth of its intended impact, she does not explain how her work will have a positive impact on entities outside of an immediate employer or any individuals to whom she intends to provide medical services. The Petitioner has not provided adequate information about how she will approach such an immense undertaking or any other explanation for how she will achieve an endeavor of this magnitude; the Petitioner has not demonstrated that her endeavor is a realistic pursuit defined by distinct milestones or outcomes. The Petitioner has not shown that she has developed an endeavor with the potential to have national or global implications within a particular field. And without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's pursuits as a nurse practitioner reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, we conclude the Petitioner has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.