U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663109

Date: APR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental director and pediatric dentist, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if noncitizens demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category as a member of the professions holding an "advanced degree." But the Director concluded that the Petitioner did not merit a national interest waiver.

On appeal, the Petitioner contends that the Director improperly analyzed evidence and failed to provide "a clear and coherent decision." The Petitioner asserts that, contrary to the Director's findings, her proposed endeavor has "national importance;" she is "well positioned" to advance it; and, overall, a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not sufficiently established the claimed national importance of her proposed venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the EB-2 category, either as advance degree professionals or as noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ the individuals in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by

demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, earned a dental surgeon degree and worked in the dentistry field in her home country for more than 16 years.

In the United States, the Petitioner seeks to continue her work as a dental director and pediatric dentist at a community health center. The position involves creating dental treatment procedures for children, coordinating billing, training office staff, and developing and implementing office procedures and protocols. She states that she aims to improve U.S. health systems by offering innovative and beneficial solutions in her clinical practice and spreading knowledge about preventative oral care through presentations and lectures.

B. EB-2 Eligibility

The Director found that the Petitioner qualifies for the EB-2 category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate"). Because we can resolve this appeal on another ground, we will reserve review of the Petitioner's qualifications for the EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

C. Substantial Merit

The record supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. A proposed undertaking may have substantial merit whether it "has the potential to create a

significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner submitted evidence that her proposed venture could improve the health of U.S. children, reduce healthcare costs and inequalities, increase access to oral care, and ease a shortage of pediatric dentists in the country. The record therefore demonstrates that the venture has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The record supports the Director's conclusion that the Petitioner has not demonstrated the claimed national importance of her proposed endeavor. Under *Dhanasar*, the record does not establish that her work would substantially affect the national economy or have significant potential to employ U.S. workers. The Petitioner claims that she has and would continue to treat many children from economically depressed areas. But the record lacks sufficient, detailed evidence to support her claim.

The Petitioner also has not demonstrated that her work would advance the pediatric dentistry field. She claims that she has introduced many innovations to the field. For example, to treat children who fear dentists, she states that she uses "new techniques focused on the psychological neo-conditioning of children, using Cognitive Behavioral Therapy (CBT), especially Applied Behavior Analysis." She also states her development of community-outreach programs to teach children and parents the importance of oral health and disease prevention. But the Petitioner has not submitted sufficient evidence to demonstrate that her techniques and programs represent innovations or that they would advance the pediatric dentistry field on a national level. The record lacks sufficient evidence that her techniques and programs are new to the field, have national implications, or would expand to have national implications.

Much of the Petitioner's evidence constitutes articles about the pediatric dentistry field, including: the importance of oral hygiene in children; lack of U.S. dental insurance coverage; and fear of dentists. As previously indicated, however, when considering national importance, USCIS must focus on a petitioner's *particular* proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889. ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). The articles about the pediatric dentistry field do not demonstrate that the Petitioner's *specific* proposed endeavor would advance the field or substantially benefit the national economy.

In response to the Director's request for additional evidence (RFE), the Petitioner also submitted an expert opinion letter from a U.S. associate professor of dental medicine. The expert finds that the

Petitioner's endeavor has national significance because it would potentially "enhance oral health, yield notable economic advantages, and tackle healthcare accessibility issues in underserved regions." Like the Petitioner's other evidence, however, the expert does not focus on the Petitioner's *specific* endeavor. Rather, the expert mostly discusses the importance of the Petitioner's field and occupation. The letter therefore does not demonstrate that the Petitioner's *particular* endeavor would have national implications for the economy or the field. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing the immigration service to reject or afford lesser evidentiary weight to expert testimony that conflicts with other information or "is in any way questionable").

On appeal, the Petitioner contends that the Director's RFE and decision contain "contradictory, arbitrary and boilerplate statements." She states that the RFE provides "little to no discussion whatsoever" of her "voluminous evidence." She states: "It placed a high burden on the Petitioner to again argue her case's merits."

The Petitioner also contends that the RFE's boilerplate language "strips [her] of the opportunity to address substantive inquiries into the merits of her case." She claims that, contrary to USCIS policy, the Director did not thoroughly review the record before issuing the RFE. *See generally* 1 *USCIS Policy Manual* E.(6)(F)(1), www.uscis.gov/policy-manual. She states that "the vague and generic language in the Denial decision indicates that the Service did not analyze the provided evidence but manifested an unjustified will to deny [her] case despite all the evidence." She suggests that, because the RFE sought additional evidence on all *Dhanasar* prongs, USCIS "was not thoroughly reviewing the evidence provided and, instead, arbitrarily dismissed the Petitioner's qualifications and proposed endeavor without proper consideration."

A RFE must "specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the ... petitioner adequate notice and sufficient information to respond." 8 C.F.R. § 103.2(b)(8)(iv). Before issuing RFEs, USCIS officers should "[r]eview all the evidence to determine if each of the essential elements [of the benefit request] has been satisfied by the applicable standard of proof." 1 *USCIS Policy Manual* E.(6)(F)(1).

Regarding national importance, the Director's RFE states:

> In support of this claim, the petitioner submitted several industry reports and articles [and] several letters of support.
>
> The evidence provided does not support the petitioner's claim that her proposed endeavor in the field of dentistry has the potential to offer substantial economic benefit to [a] region of the United States or to the nation. The petitioner has not provided any objective documentary evidence to support *tool made its calculations and how the system formulated its results.* The petitioner may no doubt provide beneficial services to the community where she proposes to practice dentistry. However, the petitioner has not demonstrated that the potential prospective impact of her work as a dentist will broadly impact the field or health care at a level contemplated by *Dhanasar*. Therefore, the petitioner has not demonstrated that the benefits to the regional or national economy resulting from the petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

> USCIS cannot conclude that the prospective impact of a Dental Director/Dentist to employers has implications beyond the employer and any of its employees, or any individual or entity for which [s]he would provide h[er] services and their employees, rising to the level of national importance.

(emphasis added). The RFE also asks the Petitioner to submit additional evidence showing that her proposed endeavor:

- Has national or even global implications within a particular field;
- Has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area;
- Will broadly enhance societal welfare or cultural or artistic enrichment; and
- Impacts a matter that a government entity has described as having national importance or is the subject of national initiatives.

We acknowledge that the highlighted phrase in the Director's RFE makes no sense. But, on balance, the RFE sufficiently notifies the Petitioner that: her support letters and industry reports and articles are insufficient to demonstrate her specific endeavor's national importance; her evidence does not establish that her particular work would have national implications for the economy or her field; and she has not shown her work's implications beyond her employer and its employees and patients. The Petitioner does not provide sufficient examples of evidence that the Director purportedly disregarded before the RFE's issuance. Also, the RFE specifies the type of evidence required to demonstrate national importance. We therefore disagree with the Petitioner and find that the Director did not issue the RFE without reviewing the record.

A denial decision must "explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i). "Written decisions should use plain language that the requestor can understand." 1 *USCIS Policy Manual* E.(9)(B).

The national importance section of the Director's 16-page decision is not a model of clarity. For example, one sentence appears to omit language about national implications, stating: "The totality of the evidence fails to demonstrate that the petitioner's proposed endeavor has 'potential prospective impact.'" Nevertheless, the decision discusses the Petitioner's evidence, including: her claims; the expert opinion letter; and the industry reports and articles. The decision also sufficiently explains the specific reasons for the denial. The decision states: "Without sufficient documentary evidence of its broader impact, the petitioner's proposed endeavor does not meet the 'national importance' element." Thus, contrary to the Petitioner's contentions, the decision does not indicate the Director's disregard of evidence or "an unjustified will to deny [her] case."

The Petitioner claims that her work contributes to multiple U.S. objectives, including:

- "[F]ortifying the national health agenda by reducing the prevalence of dental diseases among children;"
- "[D]riving economic advantages for U.S.-based dental clinics by introducing innovative treatment modalities and efficient operational techniques;"

- "[E]nhancing the global standing of U.S. pediatric dentistry through groundbreaking research and collaborative ventures;"
- "[I]nstituting and refining state-of-the-art pediatric dental solutions, ensuring the highest standards of patient safety and treatment efficacy;" and
- "[U]plifting the professional ecosystem by mentoring budding dental practitioners and advocating for optimized work conditions."

We agree that these objectives have substantial merit. But, again, in considering national importance, we must focus on the Petitioner's *specific* endeavor. Evidence shows that her work would *contribute* to these national objectives. But that is not enough to demonstrate national importance. Rather, the Petitioner must demonstrate that her *particular* work – by itself and uncombined with the work of other U.S. dental professionals – would have national implications. *See* 6 *USCIS Policy Manual* F.(5)(D)(1) ("In determining national importance, the officer's analysis should focus on what the beneficiary will be doing.")

For example, in *Dhanasar*, we found that a proposal to teach science, technology, engineering, and mathematics (STEM) courses at a U.S. university had substantial merit but lacked national importance. *Matter of Dhanasar*, 26 I&N Dec. at 893. We concluded that "the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* Similarly, the Petitioner's proposed work as a dental professional in the United States has substantial merit. But, like the petitioner in *Dhanasar*, the Petitioner here has not demonstrated that her *particular* work – as opposed to her field or occupation – would have national implications.

E. The Remaining Waiver Issues

Our determination regarding the proposed endeavor's national importance resolves this appeal. Thus, as with the Petitioner's EB-2 eligibility, we decline to reach and hereby reserve decisions on her appellate arguments regarding her positioning to advance her proposed venture and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not demonstrated that her proposed endeavor has national importance. She therefore does not qualify for a national interest waiver, and we will affirm the petition's denial for lack of a job offer.

ORDER: The appeal is dismissed.