U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30636626

Date: APR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a surgeon in aesthetic medicine, 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 is not eligible for a national interest waiver under 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. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* 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 surgeon and physician in aesthetic and regenerative medicine. Initially the Petitioner stated he planned to "appl[y] his clinical knowledge in aesthetic medicine by providing comprehensive services to underrepresented populations within the United States, particularly . . . individuals who have been subject to gender-based violence and survivors of firearms related damage." In support of this endeavor, the Petitioner submitted a personal statement, various industry reports and articles discussing the impact of foreign national doctors to the U.S. health care industry and national initiatives aimed at combating the shortage of qualified physicians, along with support letters discussing the Petitioner's expertise as a surgeon and in the aesthetic medicine field.[2] The Petitioner asserted that the record established his proposed endeavor was "national in scope, [because it would] produce significant national benefits, due to the ripple effects of his professional activities. . . [and] contribute to tax revenue, generate jobs for U.S. workers, and ultimately increase the flow of money in the U[nited] S[tates]." The Petitioner did not submit a business plan with the initial filing, and consequently did not provide details as to how he planned to execute his endeavor.

In response to the Director's request for evidence (RFE), the Petitioner submitted a newly created five-year business plan for a Florida-based aesthetic medicine services company, indicating he would serve

[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).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

as the company's scientific director. The business plan described the aesthetic-medicine services the company would provide, including "facial cleansing, premium facial cleansing, facial dermonutrition with Dermapen, Botulinum toxin (Botox), hyaluronic acid application, and RF (radio frequency) treatments for women and men." In addition, through this company, the Petitioner now indicated he planned to "provide training courses in laser surgery and procedures to physicians and plastic surgeons." According to the business plan, "the petitioner strives to contribute to a higher quality of life of American patients." The plan explained that this endeavor is of national importance because of the growing demand for aesthetic-medicine services, which in turn can improve the confidence, self-esteem, and quality of life for their patients. The Petitioner also submitted an expert opinion letter in response to the Director's RFE, which generally concluded the Petitioner's endeavor has national importance due to the rapid growth in the aesthetic medicine industry and the Petitioner's expertise, which would allow him to meet this demand of clients.

After acknowledging the submission of the new evidence, including the business plan and expert opinion letter, the Director denied the petition, concluding that the Petitioner did not establish his endeavor has national importance under the first prong of the *Dhanasar* framework. Specifically, the Director concluded that the record did not support the Petitioner's assertions that his endeavor would have broader implications to the aesthetic medicine field or the United States, or otherwise result in other substantial positive economic effects as contemplated under the first prong of the *Dhanasar* analytical framework.

On appeal, the Petitioner generally asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence on record that established both his experience in the field as well as the impact of his proposed business endeavor. The Petitioner also asserts the Director erred in disregarding the expert opinion letter solely because the expert had not established their expertise as it relates to INA § 203(b)(2)(B).

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon a de novo review of the record, we see no error in the Director's evaluation of the evidence, as it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

The Petitioner asserts that the Director erred by not fully considering the business plan which he contends establishes the national importance of the endeavor given the services he plans to offer. Specifically, the Petitioner notes that the business plan mentions he will provide reconstructive surgery to burn victims "to allow these individuals to recover physically and emotionally from this traumatic experience. . . [and] treat patients from all over the United States, which . . . is in the national interest of the U[nited] S[tates]." And the business plan elaborated on the Petitioner plans to provide training to plastic surgeons and physicians. Yet, while these services may speak to the merit of the endeavor, they do not establish its national importance. We would also note that the business plan contains inconsistencies regarding the offerings of the company. In the first section, the plan indicates the company will offer the aesthetic services listed above. These are also the only offerings referenced in

the business plan's sales forecasts for the company's initial five years of operation, even though it also indicates that the company will hire a plastic surgeon to perform reconstructive surgery for burn victims, and otherwise discusses the impact of plastic surgery. As such, it is not apparent from the business plan how much time, if any, the company will dedicate to offering reconstructive surgery services to burn victims or other individuals. Regardless, the Petitioner has not addressed the Director's conclusion that any benefits from the Petitioner's endeavor do not appear to extend beyond his immediate patients or potential trainees to result in broader implications to the field. 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 patients to impact the aesthetic medicine or healthcare field or U.S. economy more broadly at a level commensurate with national importance.

Moreover, while the author described their own experience within the medical field, the expert opinion letter did not discuss any broader implications that would be attributable to the Petitioner's specific endeavor, instead relying solely on the importance of the aesthetic medicine field generally and the Petitioner's professional experience to support their conclusion that the proposed endeavor has national importance. When evaluating the national importance of a proposed endeavor, 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. In addition, a petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which does not evaluate the prospective impact of an endeavor, but instead "shifts the focus from the proposed endeavor to the foreign national." *Id.*

Here, much of the letter's content lacked relevance and probative value with respect to the national importance of the proposed endeavor. While we may use expert opinion letters submitted by the Petitioner as advisory testimony, we are responsible for making the final determination regarding eligibility for the benefit sought. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). As such, the Director's alleged error in disregarding the expert opinion letter is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))).

We also agree with the Director that the Petitioner has not established that the endeavor would have a "a significant potential to employ U.S. workers" or otherwise reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar* at 890. The business plan states that the company intends to employ a total of 12 employees within the first five years of operations, with a total payroll expense of $762,443. The Petitioner also anticipates total sales of $1,069,942 in the first five years of operations. However, the business plan provides no explanation for the basis of these projections. On appeal, the Petitioner asserts that the Director's "singular focus on employee numbers and sales figures is misplaced," yet the Petitioner has not otherwise established *how* the endeavor would result in direct economic benefits that would rise to the level of national importance. Even if the endeavor's revenue and job creation projections were more than conjecture, they do not establish

that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations, nor has he provided evidence that his business operations will impact an economically depressed area. And that is the Petitioner's burden to meet. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

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. *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.