U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30634015

Date: APR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, seeks 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 Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. Next, a petitioner 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, 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.

In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework, and concluded that the Petitioner did not demonstrate that she meets the first and third prongs. On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that she meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Petitioner states that she worked as a dental surgeon and clinic owner in Brazil. In a business plan submitted with the petition, the Petitioner stated that she intends to create [redacted] a dental services organization (DSO), that "will provide its infrastructure in support of dentists and/or dental clinics, as well as acting in support for dentists and/or dental clinics outside its facilities." The business plan further indicated that the DSO will provide numerous services to dentists, including infrastructure (including machine maintenance), business management, marketing and branding, tax services, information technology (including software), financial and capital management, and management of human resources, courses and training. The plan also stated that the company's main products and services include dental chair rentals for dental care providers.

In addition to her business plan, the Petitioner submitted copies of her academic credentials, letters of support and recommendation, and industry articles and reports.

The Director determined that although the Petitioner's proposed endeavor had substantial merit, her initial filing did not establish that the proposed endeavor had national importance. The Director observed that the Petitioner's evidence did not provide specific insight as to what she intends to do in the United States, or that her proposed endeavor would have potential prospective impact, significant potential to employ U.S. workers, or other substantial positive economic effects. As a result, the Director issued a request for evidence (RFE) that requested a detailed description of the Petitioner's proposed endeavor in order to evaluate her request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner summarized her business plan and discussed the goals of her proposed endeavor, noting that her DSO would help provide better access to capital and efficiencies of scale that allow dentists to leverage new technologies and practices. She also emphasized the importance of oral health in relation to general health, and claimed that her endeavor would benefit both dentists and patients. In addition, she submitted additional testimonials letters and industry articles in support of her eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that her proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. On appeal, the Petitioner provides a brief emphasizing her qualifications and asserting that the evidence of record establishes the national importance of the proposed endeavor.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. 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.

We agree with the Director that the Petitioner has not provided sufficient documentation explaining how the proposed endeavor is of national importance. While the Petitioner's statements and evidence reflect her intention to provide management and support services to dental clinics through her DSO, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her own proposed organization and its clients to impact dentistry, the oral health field, or the U.S. economy more broadly at a level commensurate with national importance.

Throughout the record and again on appeal, the Petitioner points to her background, education, and experience in her field.[2] The Petitioner also provided several letters of support that discuss her experience in the field of dentistry and her clinic management experience. The Petitioner's knowledge, skills, and experience in her field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor

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

satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work.

We note the Petitioner's submission of articles and reports, both prior to adjudication and again on appeal, about the lack of affordable dental care in the United States, dental care trends, and the importance of oral health. In determining national importance, however, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing management and support services to dental clinics through her DSO rather than the importance of the field of dentistry. While we note that the findings in the publications support the Director's determination that the proposed endeavor has substantial merit, they do not establish that the endeavor has national importance.

The Petitioner submitted letters of support that speak to her character and her talents in the field. Letters from [redacted] endorse the Petitioner and assert that her professional experience coupled with her managerial experience in operating dental clinics will greatly contribute to the U.S. healthcare system. A letter from [redacted] compliments her abilities as a dentist and dental clinic entrepreneur and recommends her for the requested classification. Letters from [redacted] discuss her success in operating her own clinic in Brazil and opine that she is well qualified to succeed in similar endeavors in the United States. Although the writers praise the Petitioner's character and abilities as a dentist and dental clinic manager and entrepreneur, and generally state that she is experienced in the field of dentistry, none of the authors discuss the Petitioner's specific proposed endeavor. Instead, the authors primarily focus on the Petitioner's character and skills. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to establish a DSO providing management and support services to dental clinics will positively impact the region or the industry beyond her company and its clients. Again, 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 "the specific endeavor that the foreign national proposes to undertake." *Id.*

The Petitioner's business plan includes industry and market analyses, business strategies, financial forecasts and projections, an explanation about startup funding, and a description of the company's proposed service offerings and personnel.[3] Regarding future staffing, the Petitioner's business plan projects that the company will hire 1 employee in year one and ultimately have 18 employees by its fifth year of operations, and indicates that the payroll will increase from $60,000 in its first year of operations to $516,000 by year five. The plan further projects that the company will generate $1.8

[3] We acknowledge the Petitioner's submission of new business plan on appeal and her assertion that this revised plan "serves the vital purpose of addressing and rectifying the documented issues associated with an initial business plan that was regrettably unclear and imperfect in its presentation." However, where a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide if for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here, the Petitioner could have submitted a revised business plan in response to the Director's RFE.

million in tax revenue and achieve $261,411 in net income by its fifth year. The Petitioner, however, does not adequately explain how these forecasts were calculated. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the financial forecast for the company indicates that it has growth potential, it does not demonstrate that 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*. *Dhanasar*, 26 I&N Dec. at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not offered sufficient evidence she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

We recognize the value of dentistry and oral health; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. We conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her clientele to impact the dentistry field or the U.S. economy more broadly at a level commensurate with national importance, as her evidence and statements are not sufficient to demonstrate her endeavor has the potential to provide her claimed economic and oral health benefits to the United States. Again, the Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the remaining *Dhanasar* prongs. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.