U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37384944

Date: APR. 17, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and physician in the orthopedic field, 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 that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. 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 dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 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

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

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner endeavors to establish in the United States "an orthopedics and traumatology clinic, [redacted] dedicated to providing and developing healthcare services, particularly in musculoskeletal care." The Petitioner intends to "prevent and treat disorders, especially among athletes and elderly individuals, utilizing advanced technologies such as regenerative medicine and non-invasive procedures." The Petitioner aims to "enhance patients' qualify of life" through "tailored medical approaches that alleviate pain, restore function, and facilitate a quicker recovery."

The Director determined that though the Petitioner's proposed endeavor has substantial merit, she has not demonstrated the national importance of the endeavor; that she is well-positioned to advance it; or that, on balance, waiving the job offer requirement would be of benefit to the United States.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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.* In *Dhanasar*, we 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.

On appeal, the Petitioner requests de novo review of her petition. In support of this request, the Petitioner asserts the denial of her petition "lacks a clear and thorough explanation of the reasons underlying the petition's rejection," and does not "properly consider the evidentiary weight of critical documents," so that the Petitioner has been "deprived . . . of a fair opportunity to address and effectively challenge the adverse decision." The Petitioner contends the denial is "capricious and arbitrary" and speculates that her petition and supporting evidence were "inadequately evaluated." The Petitioner further claims the denial decision fails to adhere to proper procedures, agency regulations, and procedural rules. The Petitioner specifies that, in part, the decision mistakenly addresses only whether the endeavor has "significant potential to employ U.S. workers or other substantial positive economic effects . . . when the foundational characteristics of the endeavor fall on other requirements for demonstrating national importance, such as: enhance societal welfare and impact directly a matter that a government entity has described as having national importance and is also the subject of national initiatives." We acknowledge that the Director's decision, in analyzing the national importance of the proposed endeavor, focused on the economic and employment effects of the endeavor without substantive consideration of its potential prospective impact within the field.

We note the Petitioner submitted a brief addressing whether her proposed endeavor has national importance on appeal As stated above, the matter before us is considered de novo.

The Petitioner asserts that in creating a facility like [redacted] she is filling "a critical need in the community," by providing healthcare during a widespread physician shortage. The Petitioner specifies that "systemic gaps" exist in "healthcare access," which she intends to address by providing "high-quality, affordable orthopedic and trauma care." The Petitioner further claims that her endeavor "has the potential to create a sustainable healthcare model." However, the shortage of occupations or occupational skills does not render a proposed endeavor nationally important under the *Dhanasar* framework. Rather, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. In addition, the Petitioner's theory that her endeavor could potentially serve as an exemplary model of healthcare is speculative and unsupported.

The Petitioner contends [redacted] goals align with national priorities, in that it will "enhance U.S. healthcare capabilities through cutting-edge regenerative medicine and musculoskeletal ultrasound" to "reduce healthcare costs and improve patient outcomes." Similarly, the Petitioner asserts [redacted] intent to integrate "a diverse healthcare workforce," and use "advance[d] healthcare technologies" align with national and state initiatives, such as increasing equitable healthcare access and "ensuring early diagnosis and management of conditions." The Petitioner claims her endeavor will put "the U.S. at the forefront of medical innovation, ensuring competitive leadership in the burgeoning global market for regenerative treatments." The Petitioner asserts that as [redacted] intends to provide "care for conditions including arthritis and tendon injuries," it will serve to alleviate "disability and chronic pain." While we acknowledge the importance of providing healthcare and of medical innovation, the assessment of national importance is not focused on the importance of a field in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently detailed or demonstrated how [redacted] impact would extend beyond the clinic and its clients to impact the healthcare and medical innovation fields more broadly, and at a level commensurate with national importance.

Before the Director, the Petitioner submitted a business plan demonstrating the intent to create 17 direct positions within five years of [redacted] inception in the United States. The Petitioner asserted she plans to expand into other states, projecting this expansion that would result in 35 additional, indirect positions. However, the record does not contain sufficient supporting evidence to corroborate these projected employment figures or establish the significance of the data to show the endeavor would provide substantial economic benefit to an economically depressed area, the region, or national economy more broadly. Although any basic economic activity resulting from the Petitioner's clinic has the potential to positively impact a local economy, the Petitioner has not sufficiently demonstrated the proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects to the level of national importance.

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.

B. Additional *Dhanasar* Prongs and Ineligibility

As our finding on this issue is dispositive of the Petitioner's appeal, we decline to reach and reserve whether the Petitioner has met the additional prongs of 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).

III. CONCLUSION

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

ORDER: The appeal is dismissed.