U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 30543163

Date: APR. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a medical technologist, 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

The first *Dhanasar* 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* While we agree with the Director's conclusion that the Petitioner established the substantial merit of his endeavor, which falls within the range of areas (health) we concluded could demonstrate substantial merit, the Petitioner has not shown that his endeavor has national importance.

The record reflects that the Petitioner intends to work in the United States as a medical technologist "validating the accuracy of diagnostic tests for infectious diseases," including self-diagnostic, at-home test kits for the viral detection of various infectious diseases including SARS-CoV-2 (the virus resulting in COVID-19), influenza, parainfluenza, and other viruses causing respiratory tract infections. In his initial filing, the Petitioner explained his intent to "implement and develop intralaboratory protocols and methods that [will] verify the accuracy, effectiveness and sensitivity of [these] diagnostic tests," explaining that his work would "allow laboratories to perform ongoing quality control of diagnostic tests to determine the reliability of certain test kits . . . [and] report any inaccurate test kits to the appropriate authority." The Petitioner's personal statement elaborated on his objectives and the methodologies he planned to use to perform validation tests, noting he would follow the protocols recommended by the World Health Organization (WHO) and the validation guidelines provided by the Food and Drug Administration (FDA) and Center for Disease Control and Prevention (CDC). In addition to his personal statement, the record also contains several articles discussing the importance of accurate diagnostic testing to combat the spread of infection diseases, the importance of public health, the impact of infectious diseases and pandemics on the U.S. economy, White House publications regarding the impacts of COVID-19 and the country's response to the pandemic, as well as several FDA communications regarding recalls of multiple SARS-CoV-2 test kits.[2]

After issuing a request for evidence (RFE) granting the Petitioner an opportunity to supplement the record with additional information and evidence to establish his eligibility for the national interest waiver, the Director denied the petition, concluding that he had not established eligibility for the requested national interest waiver, as he did not satisfy the *Dhanasar* three-prong framework.

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

On appeal, the Petitioner asserts that the Director did not properly consider the evidence on record, highlighting the duplicative nature of the language contained in the Director's decision and their RFE. The Petitioner cites to *Chursov v. Miller*, 1:18-CV-02886-PKS (S.D. NY 2019), stating that a "failure to adequately consider the totality of the submission was arbitrary and capricious." And the Petitioner also relies on *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support of his assertion that the Director erred in failing to consider all the evidence in its totality. But the court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. Likewise, the Petitioner's reliance on *Muni v. INS*, 891 F. Supp 440 (N.D. Ill. 1995) for its holding that the former Immigration and Naturalization Service acted without rational explanation and abused its discretion when it failed to weigh important factors and state its reasoning for denying relief is not persuasive. In *Muni,* the court pointed to the Director's failure to properly consider persuasive evidence that established eligibility as an abuse of discretion. Here, the Director's decision did discuss the evidence directly relating to the Petitioner's specific endeavor (his personal statement) and provided an explanation as to why it did not meet the first *Dhanasar* prong. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor it is necessary for it to address every piece of evidence the Petitioner presents. *See, e.g., Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023) ("[S]o long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." (cleaned up)); *Osuchukwu v. INS*, 744 F.2d 1136, 1142-43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

Moreover, although we agree with the Petitioner that the Director did not directly discuss every piece of evidence he considers as salient to establishing the national importance of his endeavor, the Petitioner has not established that those omitted documents—primarily the articles on the importance of accurate diagnostic testing—establish that his *specific endeavor* is of national importance. As such, the Director's alleged error 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))).

Upon a de novo review, we agree with the Director's conclusion that the record does not establish the Petitioner's endeavor rises to the level of national importance contemplated under *Dhanasar*. We said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" resulting from the proposed endeavor, noting 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.

While the Petitioner contends the Director "failed to assess all the evidence in the record," the Petitioner has not established *how* the evidence the Director did not specifically discuss establishes

the Petitioner's eligibility for a national interest waiver. For example, the Petitioner continues to rely on the importance of the diagnostic testing field without establishing that his specific endeavor rises to the level of national importance. The Petitioner asserts that the "articles submitted support the conclusion that [the Petitioner's] proposed activities hold national importance because they have broader implications within the field of health (by promoting the circulation of more accurate and reliable testing devices)"; however, this misapplies *Dhanasar's* first prong. The articles do not discuss the Petitioner's specific endeavor or explain how his endeavor will be of national importance or otherwise lead to broader implications within the field. As mentioned above, when determining whether a proposed endeavor has national importance, we focus on the Petitioner's "specific endeavor," not the importance of the field, industry, or profession. *Id.* at 889

On appeal, the Petitioner states that his endeavor is of national importance for four primary reasons: (1) the implementation of quality controls helps to ensure that testing devices are thoroughly checked and accurately detect specific viruses; (2) the introduction of protocols to validate testing devices leads to advances for the entire field of medical technology; (3) the validation of the reliability of diagnostic testing devices has a substantial positive impact on the U.S. economy and enhances societal welfare for the American people; and (4) the accuracy and reliability of diagnostic testing has been deemed nationally importance by government entities and is the subject of national initiatives. Yet, these assertions generally relate to the importance of validating diagnostic tests for infectious diseases, rather than the Petitioner's specific endeavor. Moreover, the evidence on record does not support the conclusions that any protocols used by the Petitioner will directly result in broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, the Petitioner's endeavor, which will only benefit the laboratories where the Petitioner is employed and/or their customers, would not have broader implications in the field. *Dhanasar* at 893.

Likewise, the Petitioner's assertion that his endeavor is of national importance because it relates to national initiatives is not persuasive. The record does not support a conclusion that his specific endeavor will offer "broader implications" to the validation of diagnostic testing or the national initiatives surrounding diagnostic testing, and he has not provided a sufficiently direct connection between his specific work and these national initiatives. While the Petitioner has identified a lab who is "interested in [his] consulting services in order to validate the tests that are performed there," the record does not establish that the Petitioner's work at this laboratory would rise to the level of national importance. For example, the Petitioner has not shown that the specific work at this laboratory has broader implications to the field, or that he will be using or introducing improved processes or medical advances which would lead to broader implications within the field. *See Id.* at 889. Likewise, while we do not disagree with the Petitioner's statements that "[t]he achievement of public health hinges on dependable testing for infectious diseases enabling the detection, treatment and prevention of such," and "the record supports the conclusion that early, effective and reliable testing kits are crucial to public health," these relate to the substantial merit and importance of the field of diagnostic testing, rather than the broader implications of the Petitioner's specific endeavor.

The Petitioner has also asserted that his endeavor will contribute to the economy, arguing that a decline in public health generally has detrimental effects on the economy, whereas his endeavor will assist public health, and therefore will have a positive impact on the economy. Yet, the Petitioner cannot rely on the generalized economic impacts of accurate diagnostic testing as sufficient to establish the national importance of his endeavor. Without sufficient information or evidence regarding any projected economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the industry), the record does not show that benefits to a regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

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.