U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31200836

Date: AUG. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a doctor of medicine and a healthcare management professional, 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 establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, but does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

If 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.

Id.

II. ANALYSIS

A. EB-2 Classification

The Petitioner is a doctor of medicine and a healthcare management professional. She submitted a diploma and transcripts for her degree as a physician and surgeon from [redacted] in Colombia. In addition, she submitted an academic evaluation that states her degree is equivalent to a U.S. doctor of medicine degree, and further states that she has two years of graduate level study in healthcare management. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree and we agree.

B. National Interest Waiver

1. Substantial Merit

The first 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. The Petitioner's proposed endeavor is to, "contribute to the America [sic] healthcare system by supporting the Latino community through an affordable and quality healthcare service model which combines outpatient setting, with the purpose of addressing pathologies such as cancer, hypertension, and vaccination processes; thus, improving their quality of life and strengthening U.S. public health." The proposed endeavor will operate in Connecticut and offer first level healthcare services as well as home level services to promote health, early disease detection, and overall well-being in Latino community with a special focus on those without healthcare and the undocumented population. The record contains articles discussing the challenges facing the Hispanic population and healthcare in the United States and how this is a matter of importance to the U.S. government. We conclude that the proposed endeavor has substantial merit.

[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 is discretionary in nature).

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that the Petitioner did not establish that her proposed endeavor is of national importance. The Petitioner contends that she submitted a well-defined proposed endeavor as well as supporting evidence from reputable, objective sources and that the Director did not consider all elements of the evidence. First, the Petitioner highlights the industry articles in the record. The Director determined that the articles go towards the national importance of the industry and not the Petitioner's proposed endeavor. The Petitioner emphasizes on appeal, "[t]he provided articles indeed demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise." 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 specific endeavor that the foreign national proposes to undertake." *Dhanasar* 26 I&N Dec. at 889. The industry reports and articles in the record discuss the U.S. government's interest in industries related to the proposed endeavor and while we recognize the value and importance of the industry, working in the industry is insufficient to establish the national importance of the proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of her proposed endeavor. For example, the Petitioner submitted a copy of the "Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage." Although the executive order provides good background information, demonstrates the U.S. government's interest in the industry, and provides evidence of substantial merit; it does not speak to the Petitioner's specific endeavor and its impact on the industry. Without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The Petitioner asserts on appeal that, "the articles and government publications provide a comprehensive view of the current healthcare landscape in the United States, particularly as it pertains to the Latino community," and "they highlight the existing challenges and urgent need for innovative solutions" that her proposed endeavor provides. However, the record does not establish what innovative solutions the Petitioner is proposing aside from opening and operating a health care company that will target helping the Latino community in preventing certain health issues. In addition, the record does not establish the Petitioner's proposed endeavor will broadly impact the health care industry or significantly reduce the existing challenges that the record highlights. Instead, the business plan discusses how the Petitioner plans to operate her business, providing health care services to Latino clients that either do not have proper health care coverage or are undocumented. 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. Similarly, without sufficient documentary evidence of a broader impact to the healthcare industry, the Petitioner's proposed endeavor does not meet the national importance element of the first prong of the *Dhanasar* framework as it only establishes a benefit to her prospective clients.

Dhanasar states that 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.* at 890. The Petitioner addresses the proposed endeavor's lack of potential to employ U.S. workers by stating that it is, "[j]ust an example of a factor

that may be considered. It is not inherently necessary to meet each of the possible evidentiary examples provided in the precedent decision in order to prove that a proposed endeavor is of national importance." While this is only one of the factors to consider, the Petitioner must establish that the proposed endeavor is of national importance by a preponderance of the evidence, which the record has not otherwise established as discussed above. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In addition, the Petitioner asserts that the Director was incorrect in stating that the record contains no evidence of substantial positive economic impacts of the proposed endeavor and that the record contains ample documentation to corroborate the economic benefits of the Petitioner's proposed endeavor. We conclude that record does not establish that the Petitioner's proposed endeavor will have substantial positive economic effects. The initial petition asserts that the Petitioner's proposed endeavor is nationally important because it will improve the health and quality of life of the Latino community and does not address any significant economic impact attributable to the proposed endeavor. In response to the request for evidence, the Petitioner addresses economic impact briefly by stating that the proposed endeavor will, "[h]elp the U.S. to address its currently overburdened healthcare sector, thereby contributing to promoting America's prosperity and opportunity." This statement is broad and does not offer any specific or qualifiable economic impact attributable to the Petitioner's proposed endeavor. Lastly in reviewing the business plan, the Petitioner asserts that there is a link between health and the economy; "[t]he strongest connection between health and the economy is sustaining a healthier workforce." The Petitioner states that her proposed endeavor will contribute to improve health and therefore strengthen local economies. While her proposed endeavor may benefit the lives of her direct clients, as stated above, the record does not establish that the benefit will impact the field more broadly and in turn, improve the health and economy in a broader way to rise to the level of national importance.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude by a preponderance of the evidence that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.