U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31569940

Date: AUG. 7, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a compliance attorney who works in the fields of healthcare waste, fraud, and abuse as well as taxation, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established the national importance of the proposed endeavor, that she is well-positioned to advance the proposed endeavor, and that on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. 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.

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. 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

- 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.

The Petitioner is an attorney who currently works for a U.S. company as a compliance attorney in its Healthcare Fraud, Waste, and Abuse department and separately conducts federal and state tax research to ensure the company's compliance with various tax codes. The Petitioner does not specify whether her proposed endeavor will involve continued work for her employer in these capacities, but she proposes to continue to her work in these two fields as a general matter. Below and on appeal, as it specifically relates to the first prong of the *Dhanasar* analytical framework, the Petitioner claims that identifying waste, fraud, and abuse in the field of healthcare, and ensuring compliance with federal and state tax codes are each important to the United States, particularly in the support of maintaining U.S. fiscal health and national enforcement priorities.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner maintains on appeal that she established the national importance of her proposed endeavor by a preponderance of the evidence and that the Director failed to fully assess all of the previously provided documents. She discusses her education, credentials, and work history with her current employer[2] and provides various articles discussing health care fraud and tax compliance in the United States.

Upon review, we adopt and affirm the Director's decision as it relates to prong one of the *Dhanasar* analysis regarding national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director properly reviewed and analyzed the Petitioner's national importance claims and pertinent evidence under the first prong of *Dhanasar*, including her assertions that identifying waste, fraud, and abuse in the U.S. healthcare system and ensuring compliance with tax laws is of benefit to the United States as a general matter, and discussed the deficiencies.

in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] Regarding the Petitioner's claims about her expertise, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Matter Dhanasar*, 26 I&N Dec. at 890.

Here, the Petitioner must establish the national importance of her proposed endeavor rather than the importance of her work as an attorney identifying potential health care waste, fraud, and abuse or researching federal and state tax laws for a current or potential employer or client. *Matter of Dhanasar*, 26 I&N at 889. The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* Further, "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.* Also, "[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.

Upon review of the record, we agree with the Director that the record, including the additional articles discussing health care fraud and tax compliance in the United States submitted on appeal, does not establish that the Petitioner's proposed endeavor, which she describes as a continuation of the kind of work she currently performs for her U.S. employer, sufficiently extends beyond her current or future employers and their clientele to impact the industry or the field more broadly, at a level commensurate with national importance. As the Director noted, the Petitioner has not shown that her proposed endeavor would impact the claimed fields more broadly, as contemplated under the first prong of the *Dhanasar* framework. *Id.* at 893 (finding 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). Moreover, the Petitioner did not claim or demonstrate how her endeavor will have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. *Id.* at 890.

Because the Petitioner did not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. The Director also denied the national interest waiver after concluding that the Petitioner did not establish that she is well positioned to advance the proposed endeavor and that, on balance, waiving the job offer requirement would benefit the United States. However, because our determination on prong one is dispositive of this appeal, further analysis of her eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose. *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 alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.