U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30588395

Date: AUG. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a specialist in lobbying and government relations in the healthcare and pharmaceutical industry, 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 did 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 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 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. 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 specialist in lobbying and government relations in the healthcare and pharmaceutical industry in Brazil. He asserts he is qualified for the EB-2 classification as a member of the professions holding an advanced degree based on his foreign equivalent to a U.S. bachelor's degree and over five years of progressive experience. He submitted a diploma and transcripts for his foreign degree along with an academic evaluation stating that his degree is equivalent to a U.S. bachelor of science in legal studies. The Petitioner states that he had over 19 years of experience in the industry at the time he initially filed the petition. The record contains a resume within his business plan; however, the record does not contain letters from employers as evidence of his progressive experience in compliance with 8 C.F.R. § 204.5(g)(1). The Director concluded in the request for evidence that the Petitioner qualified as a member of the professions holding an advanced degree but did not discuss the evidence in the record. However, as the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

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 states that his proposed endeavor is to establish a lobbying and legal consulting company, offering a variety of consulting services to its clients, specifically foundations, non-governmental organizations, health plan providers, health organizations, medical and pharmaceutical companies, and health associations, covering different aspects of lobbying and

[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] *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).

government relations matters. The record includes information on current challenges facing the pharmaceutical industry in the United States and as the importance of lobbying to advance health and science policy. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Director concluded that although the Petitioner's proposed endeavor has substantial merit, it does not meet the threshold of national importance. The Petitioner contends that the Director's decision did not explain the specific reasons for the denial and did not address all his assertions for why his proposed endeavor is nationally important. The Petitioner first highlights the Director's determination that the industry articles in the record are, "generic regarding the field, and does not support that the proposed endeavor has national importance." The Petitioner contends that the articles show the national importance of the proposed endeavor as they highlight current national challenges in the industry such as the cost of health care preventing people from getting needed care and a national shortage in cancer drugs.

We acknowledge the importance of the industry; however, 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.* While these articles provide important background information on current challenges facing the industry, here, the Petitioner improperly relies upon the importance of the industry to establish the national importance of his proposed endeavor. The Petitioner asserts that his proposed endeavor will help alleviate the industry challenges that the articles highlight, however, the Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to have broader implications to the U.S. healthcare and pharmaceutical industry. The Petitioner must support his assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376. Without sufficient documentary evidence of the specific proposed endeavor's broader impact in the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The Petitioner contends that his proposed endeavor is of national importance because it is in the STEM field. The Petitioner asserts his field of expertise falls within the "Department of Homeland Security STEM Designated Degree Program List" under "Pharmaeconomics/ Pharmeceutical Economics." However, "[w]ith respect to the first [*Dhanasar*] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *See* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. A STEM endeavor that is not indicative of an impact in the particular field of STEM more broadly would not establish its national importance. *See id.* Therefore, whether the proposed endeavor is in a STEM field or is listed on the "DHS STEM Designated Degree Program List" is not dispositive--the Petitioner must still establish that the proposed endeavor would have an impact in the field of STEM more broadly or have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.*; *see also Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner states that his proposed endeavor can be categorized under this industry, but record does not establish that the proposed endeavor would have a broad impact on the "Pharmaeconomics/ Pharmeceutical Economics" industry, other than his assertion that he has

experience with pharmaceutical economics and his endeavor has, "potential to help the U.S. to grow and reach its 2023 goal of leading the STEM field among the globe."

Dhanasar states that a proposed endeavor may have national importance if it has, "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar,* 26 I&N Dec. at 890. The Petitioner states that he will "contribute to America's prosperity" by employing 16 direct employees by his company's 5th year of operation and create 34 indirect jobs within that same time frame. The initial petition discusses the vast pharmaceutical industry and its impact on the U.S. economy and employment; however, the record does not establish that staffing levels of his specific proposed endeavor demonstrates "significant potential to employ U.S. workers" and therefore do not rise to the level of national importance. In addition, the record does not establish that the proposed endeavor would have a substantial positive economic impact, other than stating the economic impact of the pharmaceutical industry as a whole.

Finally, the Petitioner asserts on appeal that his proposed endeavor will broadly enhance societal welfare, stating, "[T]he healthcare sector is one of the most important domains that impacts the entire global population and is closely linked to the development of any country. . .lobbying and government affairs consulting services. . . have a significant impact on the development of the national health care system and on the spread of affordable medication." To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his specific proposed endeavor.

While the Petitioner's statements reflect his intention to broadly enhance societal welfare, he has not offered sufficient objective and independent evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. *Chawathe*, 25 I&N Dec. at 376. For example, the Petitioner states that he will, support patent reforms by advocating for, "[p]atent reform measures. . . . This might include endorsing policies that make it easier for generic drug manufacturers to bring affordable alternatives to marker once patents expire." However, the record does not contain sufficient independent evidence of how the Petitioner will do this or what the impact of this would be. 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. *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude the record does not contain sufficient evidence to show potential impact of the Petitioner endorsing certain policies and that the Petitioner's proposed endeavor stands to sufficiently extend beyond his direct clients to impact the pharmaceutical industry or the U.S. economy more broadly at a level commensurate with 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 Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

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 he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.