U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30992637

Date: AUG. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse in the field of obstetrics, 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 nurse in the field of obstetrics. She submitted a diploma and transcripts for her foreign degrees in nursing and applied obstetric nursing. The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree but did not provide any analysis of the evidence in the record. 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 her proposed endeavor is to start a company providing midwife and doula services to women during their pregnancies and the postpartum period along with care for the first six weeks of a newborn's life. The record includes information on the positive impact of doulas and midwives on birth experiences and outcomes along with a growing demand for those in this field. 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 determined that the record did not establish the Petitioner's proposed endeavor met the criteria for national importance. Upon de novo review, we conclude the Petitioner's proposed endeavor does not rise to the level of national importance as set forth in the *Dhanasar* framework.

---

[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).

The appeal begins with the Petitioner stating that she has acquired specialized knowledge and experience and therefore she has the expertise to open her proposed company in the industry of midwife and doula obstetric care. Information on knowledge, skills, and experience are helpful in prong two analysis, on whether the Petitioner is well positioned to advance the proposed endeavor, however, it does not support an assertion of national importance.

On appeal, the Petitioner contends her proposed endeavor will have a positive economic impact as her services will help families to continue working before their child is born and, "the economy will continue to move forward, and it will not be necessary for children's parents to stop working before their children are born due to issues related to poor health care." In addition, the Petitioner states her proposed endeavor will have substantial positive economic effects, particularly in an economically depressed area by providing affordable obstetric care for families living in areas of economic depression. However, while the intention is meritorious, the record does not contain any information or documentation that corroborates this information. The Petitioner's claims of her proposed endeavor's economic impact have not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide these benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *Chawathe*, 25 I&N Dec. at 376.

The Petitioner also asserts that her proposed endeavor has the potential to employ 8 professionals and plans to increase the number to 12 by the company's fifth year of operation. *Dhanasar* states that a proposed endeavor can rise to the level of national importance by having, "significant potential to employ U.S. workers." *Dhanasar*, 26 I&N Dec. at 890. However, the business plan only lists the types of jobs the Petitioner plans to hire: the CEO and founder (the Petitioner), doulas and midwives, accountant/cashier, client service executive/call center agent, and a driver. The business plan does not list the number of employees the Petitioner intends to hire as the appeal does. Furthermore, her projected staffing levels are not corroborated and even if they were, they are not high enough to rise to the level of "significant potential to employ U.S. workers" and therefore do not rise to the level of national importance.

Dhanasar states that a proposed endeavor may have national importance because it has "national or even global implications within a particular field, such as certain improved manufacturing processes or medical advances." *Id.* at 889. The Petitioner states that she will bring innovation to the doula and midwives' market and provide new techniques, but it is unclear what innovation or new techniques she plans to introduce to the field and the record also does not establish what impact her endeavor will have. She emphasizes that her company will incorporate medical care along with cultural care to the Hispanic and Brazilian communities. Here too, the record is unclear as to what is included in "cultural care" aside from speaking in her clients' preferred language. 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* at 893. Similarly in this case, the record does not establish that the Petitioner's proposed endeavor will have national or global implications, but its impact will be limited to her direct clients.

In addition, the business plan does not sufficiently describe the scope of the proposed endeavor. The business plan initially states that the company will operate out of [redacted] Florida, and their work will "move across different cities and locations in the state," which appears to limit its location to the state

of Florida. In a different part of the business plan, the Petitioner states that her plan is to expand her business; starting in [redacted] Florida, in the first year of operation, three nursing advisory offices in the second year, followed by six nursing advisory offices in the third year. Finally, she states in the fifth year, "I want to have conquered the 50 states of the United States of America with the nursing practice." The record is inconsistent on the scope of operation and does establish a plan on how this will occur. However, whether with one location or several locations, it appears the Petitioner's services still stand to benefit her direct clients, but not have an impact on the greater industry in which she works.

The record also contains an expert opinion letter; however, its national importance claims focus primarily on the Petitioner's experience and the nursing field, and not the specific prospective impact of the Petitioner's proposed endeavor. 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 she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.