U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33243511

Date: AUG. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse who proposes to operate a startup company to facilitate access to healthcare-related information for the elderly, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 that the Petitioner qualifies for EB-2 immigrant classification and a national interest waiver of the job offer requirement. 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 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.

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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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,[3] 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. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

Although the Petitioner initially claimed that she is a member of the professions holding an advanced degree, the Director did not address this portion of her petition. Upon review, the evidence is insufficient to show that the Petitioner holds an advanced degree. She claims that the nursing diploma she obtained in Brazil is equivalent to a U.S. baccalaureate degree and that since obtaining her nursing degree, she has obtained additional education in addition to more than five years of progressive post-baccalaureate experience in nursing. The Petitioner submitted a copy of her diploma from the [redacted][4] in Brazil, a transcript showing she attended eight semesters of classes for her nursing degree, and evidence of additional post-graduate specialization certificates she obtained.

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *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).
[4] Other evidence in the record refers to this institution as the [redacted]

She also provided an Academic Credential Evaluation Report (academic evaluation) by a private degree evaluator, opining that the Petitioner's education is "functionally equivalent to the U.S. degrees of Bachelor of Science in Nursing and Master of Science in Nursing/Master of Public Health." Specifically, the academic evaluation states the Petitioner's nursing degree is equivalent to a U.S. Bachelor of Science in nursing and that her further studies resulting in certificates of specialization are equivalent to a U.S. Master of Science in Nursing/Master of Public Health. The Petitioner also argues that she has more than five years of post-baccalaureate work experience.

Regardless of her education or experience after obtaining her nursing diploma, the evidence is not sufficient to show that the Petitioner has the equivalent of a U.S. baccalaureate degree. The record indicates that the Petitioner attended the [redacted] between 1996 and 1999 but the academic evaluation she submitted notes the institution did not "transform[] into a university center" until 1999. Publicly available information about the history of the institution also shows that the Brazilian Ministry of Education authorized its operation as a university in September 1999, and the transcript she submitted indicates in the letterhead that it operates pursuant to a decree issued in 1999. The record does not contain evidence that the university was accredited prior to 1999. For purposes of EB-2 classification, a college or university must have been accredited by the relevant authority at the time the individual attended the institution. While the regulations at 8 C.F.R. § 204.5 do not specifically state that a degree must come from an accredited college or university, the requirement is implicit in the regulation. This requirement ensures that the college or university was evaluated by a credible institution to possess a basic level of quality by applying specific criteria and procedures reflecting the qualities of a sound educational program. Accordingly, we will not recognize a degree from an unaccredited educational institution for purposes of satisfying the educational requirements for EB-2 classification. The Petitioner attended the [redacted] from 1996 to 1999, apparently prior to the accreditation of the university, according to the information she provided. She has not submitted sufficient evidence that her nursing degree is equivalent to a U.S. baccalaureate degree, and therefore she cannot establish that she holds an advanced degree.

B. Exceptional Ability

The Director determined that the Petitioner met two of the regulatory criteria for classification as an individual of exceptional ability. Although the Petitioner claims in some portions of her appeal and response to the Director's request for evidence (RFE) that she did not claim to be an individual of exceptional ability, her attorney did state in the letter supporting her petition that she is both a member of the professions holding an advanced degree and an individual with exceptional ability. However, the arguments and evidence that followed focused on whether she has an advanced degree. On appeal, the Petitioner notes that although the Director indicated that the Petitioner sought to classify herself as an individual of exceptional ability, "That was not the case, as [her] Advanced Degree has been evidenced . . . ." However, she also states on appeal that her "Exceptional Ability (three criteria) have already been evidenced . . ." and appears to argue that she meets the criteria relating to possession of a degree, diploma, or certificate; ten years of full-time work experience; license to practice the profession; and recognition for achievements and significant contributions to the field.[5] The record does not clearly indicate whether

[5] The Petitioner also notes on appeal that the Director mistakenly stated in the RFE that the Petitioner is a speech therapist. We acknowledge this error, but it was harmless, as the Director did not repeat the mistake in the final decision and the record indicates the Director properly assessed the Petitioner's experience as a nurse and her proposed endeavor in healthcare.

the Petitioner claims to qualify as an individual of exceptional ability, but because the Director partly based the denial on a determination that she did not meet this requirement, we will address it. Upon de novo review, the evidence is not sufficient to show that the Petitioner meets at least three of the regulatory criteria for classification as an individual of exceptional ability.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Director concluded, and we agree, that the Petitioner meets this criterion. The Petitioner has a diploma in nursing from the [redacted] in Brazil, as well as certificates and transcripts reflecting further education in nursing specializations.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director determined that the Petitioner did not meet this criterion. Upon de novo review, we agree. The Petitioner submitted a letter from her employer at [redacted] indicating she worked there from 2002 to 2004. Although the letter describes the Petitioner's duties at the hospital, it does not specify the start and end dates of her employment or state whether she worked full or part time. Similarly, she submits a letter from her employer at [redacted] indicating only that she worked there from 2013 to 2014 without providing specific start and end dates or whether she worked full or part time. Even if these two letters did contain the necessary details, they only account for approximately three years of employment in total and she has not provided letters from other employers to show at least ten years of full-time experience. The Petitioner provided her Brazilian Digital Work Card, which lists her history of employment contracts with dates and an occupation name for each, but it does not provide a description of her duties or indicate whether she worked full or part time. The other letters the Petitioner provides are from former colleagues who worked with her, particularly at the [redacted] but those letters do not meet the plain language requirements of the regulation that they be from current or former employers, and the Petitioner does not provide evidence that letters from her current or former employers are unavailable such that the regulation would allow us to accept other evidence. 8 C.F.R. § 204.5(g)(1). Furthermore, the letters from the Petitioner's former colleagues do not contain the required details about her dates of employment and full or part time work schedule. The Petitioner has not met this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

In the RFE, the Director stated this criterion was met because the Petitioner submitted a certificate from the Regional Council of Odontology and a license from the "Federal and Regional Council of Odontology for Dental Surgeon." This appears to have been in error, as the Petitioner's education and work experience are in nursing, not odontology or dental surgery, but neither the Director nor the Petitioner raised the issue. However, the Petitioner did submit her membership card indicating her registration as a nurse with the Federal Counsel of Nursing. Therefore, upon de novo review, she has provided a license or certification to practice the profession of nursing and meets this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner submitted letters of support from colleagues and former employers who worked with her in healthcare settings. The letters generally praised the Petitioner's nursing skills, professionalism, and contributions to the care of her patients, but did not explain how the Petitioner's work was recognized for achievements and significant contributions to the industry or field. On appeal, the Petitioner argues generally that she has "introduced a plethora of documents" showing that she has been recognized for her achievements and contributions "to peers, governmental entities, and professional and business organizations," but does not offer further explanation because she asserts that she already met three other criteria. As stated, although the recommendation letters discuss the Petitioner's value as an employee and her successes working as a nurse in various healthcare settings, they do not provide information on recognitions she received for achievements and significant contributions to the field. The Petitioner has not met this criterion.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that she is an advanced degree professional or that she has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. However, even if she had made such a showing, she still has not established that a national interest waiver of the job offer requirement attached to this classification is in the national interest.

The Petitioner has a degree in nursing from a Brazilian university, in addition to post-graduate certificates in several nursing specializations. She has worked as a nurse in healthcare settings. Her proposed endeavor is to own, operate, and serve as the CEO of a startup company "aimed at developing health education solutions that facilitate access to quality information and the integration of knowledge capable of improving the experience of the elderly in maintaining their health at low costs." The brief in support of her petition explains that she intends to focus on "providing health-care consulting services to various clinics in the US in order to improve their work processes, methodologies, patient care strategies, and much more." However, her business plan states she will "reduce the dependence of the elderly through courses, seminars, and workshops that stimulate the search for health, well-bring, life quality, and theoretical/practical training that empower the elderly to regain their autonomy." She states the services she will provide include webinars, "external seminars," online courses and games, "presential courses," and individual consulting with "the elderly and their

families," but does not discuss in her business plan an intention to provide consulting for medical clinics. The discrepancy between the brief and the business plan on this point is not clarified in the record. The Petitioner asserts that her efforts to educate the elderly about healthcare will prevent diseases, reduce public spending on healthcare, and improve the independence of elderly people. She describes a plan to begin operations in Florida, serving up to seventy percent of the elderly population in that state, or approximately three million people. She states she will expand operations to neighboring states after the third year and will eventually serve clients in every state "through itinerant seminars" and online workshops covering "topics of health, diseases prevention, self-care and the elderly independence . . . ." She intends for 2.3 percent of Florida's elderly population to be customers of her company by the end of her fifth year in business.

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. 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. *Id.* at 889.

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889.

The Petitioner discusses the aging population in the United States and notes that the "increasing number of adults aged 65 and older has boosted demand for long-term care services . . . ." She notes links between poverty and health care costs, high public spending on health care, and the difficulties elderly and other marginalized people face in accessing quality health care and information. As supporting evidence, she provides articles about industry growth and the rising demand for services to the elderly in the United States due to an aging population; data on total health expenditures in the United States; population projections data; information on increasing healthcare costs due to the population growth of persons aged 65 and older; the importance of clinical preventive services in managing the health care of older adults to improve their quality of life and reduce U.S. healthcare spending; and articles on the nursing workforce in the United States. However, whether healthcare for elderly adults is important is not the issue here and relates more to the substantial merit of the proposed endeavor. Instead, the Petitioner must show that her specific, proposed endeavor of providing classes and workshops to elderly adults in Florida is nationally important.

In *Dhanasar*, we noted that "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.* 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.

The Petitioner also contends that her proposed endeavor can help alleviate the nursing shortage in the United States by providing alternative healthcare solutions for elderly people. However, the shortage of occupations or occupational skills does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Moreover, the Petitioner stresses her knowledge, education, and experience and asserts that she will positively influence the environment in which she works. However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

As additional supporting evidence, the Petitioner submits an expert opinion letter from a university professor who found the Petitioner's initial proposed endeavor has national importance. The letter discusses the aging population in the United States and the need for care services and healthcare spending to support that population and states the Petitioner will have a national impact by "reducing elderly dependence through courses, seminars, and workshops promoting health, well-being, and quality of life." However, the letter does not explain how the Petitioner's plan to conduct workshops for elderly people in Florida would have broader implications for our country. Here, the letter repeats the same arguments addressed above pertaining to the importance of various topics and subjects without showing the wider effect in the field of the Petitioner's particular proposed endeavor. The expert opinion letter also discusses the Petitioner's plan to hire 21 people over five years without showing the projected U.S. economic impact attributable to the Petitioner's particular services or company. Here, the record does not show any benefits to the U.S. regional or national economy resulting from her specific services or business would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

However, the letter does not explain how the Petitioner's particular services would have broader implications for our country. The letter also emphasizes the Petitioner's "impressive 22-year tenure in the health industry" and her expertise in nursing. But the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her services would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients or employees to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Although she provided a business plan for the proposed company, the Petitioner did not present sufficient supporting evidence to corroborate the assertions and figures. Moreover, the Petitioner did

not demonstrate how her business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts gross revenues of $220,268 in year one and growing to $1,936,632 in year five, Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims total employment of four people in year one and 21 in year five, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits in Florida or the U.S. economy more broadly at a level commensurate with national importance. The Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Therefore, further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, and a review of the Petitioner's qualification for the underlying immigrant classification, 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 applicants do not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated eligibility for EB-2 classification as a member of the professions holding an advanced degree or an individual of exceptional ability. Additionally, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed.

ORDER: The appeal is dismissed.