U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32867535

Date: AUG. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dentist, 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 the Petitioner did not establish that she is eligible for or otherwise merits 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. 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 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

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further determined that while the Petitioner established that she is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, she did not establish 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 under *Dhanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[2]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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 "the specific endeavor that the foreign national proposes to undertake." Id.

The Petitioner resides in the United States as a spouse of a nonimmigrant E-2 treaty investor and works as a dentist for his dental business in [redacted] Arizona. She indicates that she also provides pro bono or reduced rate dental services one or two days a month for military members, a local nonprofit, and others in need. In her statement, she states that she proposes to continue working for her spouse's dental clinic, open multiple dental clinics, and within two years provide mobile dental services to rural and underserved communities in the [redacted] area. In the future, she intends to expand her business by opening new clinics in Vermont and California. For her proposed dental clinic, she plans to purchase existing dental clinics from retiring dentists. She intends to hire new dental school graduates and provide them with practical dental training, as well as business training so they can eventually open their own dental clinic or purchase one of her new dental clinics. Using this business model, she

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

intends to help address the shortage of dental services for underserved and rural communities. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director determined that the Petitioner did not establish that her proposed endeavor is of national importance. The Director found that the Petitioner did not sufficiently demonstrate her proposed endeavor would extend beyond her dental clinic business and patients to have a potential prospective impact on her field more broadly. The Director also pointed out that evidence showing the shortage of qualified dental professionals does not render her endeavor nationally important under the Dhanasar framework.

On appeal, the Petitioner contends the Director's decision erred in applying the law to the facts of her case, and it disregarded submitted evidence, specifically an opinion report, a U.S. government initiative, and industry articles and reports. She contends that the Director erroneously limited her endeavor's prospective impact on its geographic scale, instead of its "broader implications," and its potential to employ U.S. workers. She argues that the Director did not consider or give due evidentiary weight to the evidence showing that her "unique dental business model" has the potential to impact the U.S. economy and societal welfare, as well as impact a matter that a government entity has described as having national importance or is the subject of national initiatives. She claims that her "specific approach" would result in establishing or revitalizing clinics that may otherwise close in rural or underserved communities across the United States. Because the United States will continue to experience a shortage of dental professionals, she maintains that her business model has the potential to be implemented by other dentists across the country to provide dental services in underserved areas.

To support her claims, the Petitioner argues the Director disregarded an opinion report from an economist and professor with the Department of Economics at the [redacted] in [redacted] Oklahoma. The opinion describes in detail the Arizona labor market for the dental industry. Because Arizona is experiencing a decrease of qualified dental professionals and an increase in aging workforce, the opinion indicates Arizona will continue to have an increase in shortage of qualified dental professionals. Moreover, the opinion maintains that the issue may worsen because Arizona is experiencing a decline in employees with an associate degree or higher, and dentists being higher degree professionals may be affected by this trend. Based on employment data, the opinion states, "[i]t is my opinion that immigration in this case rises to the occasion of national interest."

However, the opinion focuses on the expected shortage of dentists in Arizona instead of focusing on the Petitioner's specific endeavor and its potential to overcome the shortage of qualified dental professionals or having a prospective impact in the field of dental care. The opinion does not mention the Petitioner's endeavor or explain how it is of national importance. Stating that the Petitioner's work would support an important industry with an expected shortage of qualified workers does not rise to the level of "national importance" as contemplated under the Dhanasar framework. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

With the appeal, the Petitioner submits an updated opinion report to clarify its initial statements. After considering the Petitioner's proposed establishment and acquisition of dental clinics and documentation relating to her prior businesses, including her prior business' personnel and salary information, the updated opinion concludes that her endeavor has the significant potential to employ U.S. workers and would have an economic impact in an underserved area in Arizona. Moreover, while acknowledging the updated opinion is given without "explicit market share data for the firms operating in Arizona," it concludes that based on a "social welfare" standard for Arizona dental industries, "granting this petition could improve existing competitive concerns and be in the general interest" of U.S. and Arizona citizens. However, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence in response to a request for evidence, we will not consider it for the first time on appeal. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").[3]

Next, the Petitioner claims that by hiring recent dental graduates and disseminating her professional dental knowledge, practical skills, and business strategies to such graduates, she would help create qualified workers in her field who would be in a position to own their own dental clinics or manage the Petitioner's future dental clinics. By doing so, her "unique" business model would thereby fulfill her industry's need for qualified dental professionals, benefit the economy, and enhance societal welfare. The Petitioner points to her 20 years of experience contending she has a history of establishing clinics or acquiring older clinics in rural or underserved communities which shows her "unique" business model has worked in the past in Canada and could be used in the United States. The Petitioner submitted documentation relating to dental clinics that either she or her spouse managed and owned in cities near [redacted] Canada, including financial documentation, leases, photographs, and business licenses. However, the significance of this documentation is not clear. For instance, the Petitioner has not provided evidence showing the dental clinics were in the claimed underserved areas or that her "unique business model" significantly reduced a shortage of dental professionals in the claimed underserved areas. While the documentation indicates she and her husband have purchased, owned, managed, and sold dental clinics in the [redacted] area, more evidence is needed to show her claimed "unique" business model and the potential impact of her proposed work rises to the level of national importance.

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. Matter of Dhanasar, 26 I&N Dec. at 893. The Petitioner argues that her "unique" business model differs from the teaching

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[3] We note that were we to consider the updated opinion, its reliance on the Petitioner's prior dental clinic businesses to establish the national importance of her proposed endeavor is misplaced, as her prior professional work relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong. Moreover, while the updated opinion claims that the intended business location shows that the Petitioner's endeavor would have an economic impact in underserved areas of Arizona and would have a social welfare impact on U.S. and Arizona citizens, it does not provide an explanation or details of the potential extent of the endeavor's economic and social welfare impact to show that it rises to the level of national importance.

activities in Dhanasar since she would be transferring her knowledge to recent dental graduates who would use the knowledge to manage their own dental clinics, whereas in Dhanasar, he taught university students and mentored middle school students. We disagree with the Petitioner's arguments. In Dhanasar, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 889. Here, the Petitioner's transfer of her professional and business knowledge to others would be limited to the recent dental graduates working for her and does not demonstrate an impact on the dental health field more broadly or rise to the level of national importance as contemplated by Dhanasar. The Petitioner has not provided evidence to support her assertions that her "unique" business model has the potential to be used by other dentists across the country to alleviate the shortage of dental professionals throughout the United States.

The Petitioner further takes issue with the Director's statement that it is unclear how her endeavor would create more dentists. She argues that her endeavor would help reduce the need for more dentists in underserved areas, particularly given recent state legislation which permits dental hygienists to perform a wider scope of services under the direction of a dentist. In support of her claims, the Petitioner submitted legislation documents, graphs, and articles indicating Arizona and other States have considered strategies to improve oral health care services in rural and underserved areas by increasing the scope of work for dental hygienists and creating new categories of dental practitioners. The Petitioner argues that a single dentist has "the capacity to operate a clinic at the same level as two or three dentists" by "employing three or four dental hygienists instead." However, while the Petitioner's reasoning shows how the new state legislation of allowing dental hygienists to perform more dental services has the potential to alleviate the shortage of qualified dentists, it does not follow that her endeavor would alleviate the shortage of qualified dentists based on this legislation. Instead, the Petitioner's reasoning indicates that based on this legislation, she has the potential to hire more hygienists to perform a wider scope of services for her business.

Next, the Petitioner argues that the Director did not consider evidence that shows her endeavor has the potential to impact societal welfare and matters that the government has described as having national importance or is the subject of national initiatives. Because her business would provide greater dental health access to underserved areas following the COVID-19 pandemic, she maintains her endeavor is aligned with the America Rescue Plan, a U.S. government initiative that grants funding for health care workers affected by the COVID-19 pandemic. The Petitioner's appeal brief and statements also stress that her endeavor is particularly important given it would alleviate unnecessary emergency room visits for oral healthcare, decrease the number of school hours lost from untreated oral healthcare, reduce unnecessary medical costs, reduce lost productivity due to untreated oral health issues, promote job growth through patients having positive appearances of their mouth and teeth, and create additional jobs at each of her new clinics. To support her assertions, the Petitioner submitted reports and articles relating to U.S. government agencies recognizing the health and economic benefits of oral healthcare; strategies to help improve oral healthcare services in rural communities; a higher number of dentists reaching retirement age will increase the shortage of dental professionals with underserved areas having the greatest impact; and dental health shortage areas in Arizona and the United States.

The importance of U.S. government initiatives supporting healthcare workers and access to healthcare post-COVID-19 pandemic is not in dispute, but their overall significance does not establish the

national importance of the Petitioner's proposed endeavor in particular. While national initiatives supporting healthcare and healthcare professionals are important to U.S. societal welfare and help demonstrate an endeavor has substantial merit, it does not follow that a petitioner providing dental clinic services after the COVID-19 pandemic has national importance. Also, working in or establishing a business in an important field is insufficient on its own to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." Id. The Petitioner makes general statements about her business' potential impact on national initiatives and underserved communities but does not quantify the proposed endeavor's expected impact in the identified areas of concern, or provide objective, probative evidence to support her contentions. Although the Petitioner provides evidence that supporting access to healthcare following the COVID-19 pandemic is a nationally important issue, she has not demonstrated the potential prospective impact of her specific endeavor to such nationally important matters.

We recognize the importance of the dental health field and related careers; however, merely working in the dental health field or starting a dental clinic business focused on underserved communities is insufficient to establish the national importance of the proposed endeavor. 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 record includes the Petitioner's statements indicating her business would create jobs for U.S. workers by hiring recent dental graduates and support staff for her dental clinics. While we acknowledge and consider the Petitioner's statements and applaud her commitment to providing dental services to underserved communities and to employ and train recent dental graduates, she has not sufficiently documented the potential prospective impact, including the asserted economic and societal welfare impact to the United States and the areas she intends to serve. The reports and articles submitted do not discuss any projected U.S. economic or societal welfare impact or job creation specifically attributable to the Petitioner's proposed endeavor.

Finally, we are not persuaded by the Petitioner's claims that the Director's request for evidence (RFE) and decision were not in compliance with USCIS policy. She argues that the RFE did not address the evidence or explain why it was insufficient, and the decision did not consider the totality of the evidence, specifically noting that neither the RFE nor the decision addressed the opinion report. Although the Director did not specifically mention the opinion report, the RFE included an analysis of the Petitioner's arguments; apprised the Petitioner that the initial evidence did not support her claims of national importance or sufficiently show the national importance of her proposed endeavor as contemplated by Dhanasar; and explained the evidence needed to establish its national importance. In the decision, the Director clearly acknowledged and analyzed various documents on record but concluded overall that the quality of the evidence lacked probative value in supporting national importance of the endeavor.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met her burden under the

preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; see also Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992)); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). We conclude that although the decision does not individually analyze each piece of evidence, it reflects the Director's reasoned consideration of the evidence. As our above analysis demonstrates, the Petitioner has not provided sufficient evidence or arguments to overcome the Director's determination.

Beyond general assertions, the Petitioner has not demonstrated that the work she proposes to undertake offers the claimed "unique" business model that would contribute to advancements in her industry or otherwise has broader implications for her field. Moreover, the economic and social welfare benefits that the Petitioner claims depend on numerous factors, and she did not offer a sufficiently direct evidentiary tie between her proposed work for her dental clinic business and the claimed economic and social welfare benefits to Arizona or the United States. Statements and claims alone are not sufficient to demonstrate the national importance of her proposed endeavor. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner's burden of proof. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998). The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. While the Petitioner expresses her desire to contribute to the United States and its underserved communities, she has not established with specific, probative evidence that her endeavor has the claimed potential to extend beyond her business and her future patients to impact the field; has the significant potential to employ U.S. workers; will have substantial positive economic effects, particularly in an economically depressed area; will broadly enhance societal welfare; or will impact a matter which is the subject of national initiatives at a level commensurate with national importance. As such, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility under the second and third prongs of Dhanasar. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not established eligibility under the requisite first prong of the Dhanasar analytical framework, she is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.