U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33102891

Date: AUG. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a clinical nurse specialist, 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 though the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. 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:

- The proposed endeavor has both substantial merit and national importance;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

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

According to the Petitioner's statement provided with the initial filing, she is a "dedicated nursing professional with 10 years of experience in providing compassionate patient care to individuals in need for care related to their physical and mental well-being in supportive settings." She intends to "continue using [her] expertise and knowledge" and "by developing and expanding [her] own business" based in California. Her company is a home health services firm that will provide home care registered nurse services, home care licensed vocational and practical nurse services, and home care certified nursing assistants. Through her business she intends to help close the gap in nursing health services between "communities' need for at-home treatment and actual delivery of health services." The Petitioner indicates that her company's primary target market will be HUB (historically underutilized business) zones in California, as designated by the U.S. Small Business Administration. Her aim is to "generate jobs for U.S. workers in these underserved areas" and "expand their professional possibilities within the healthcare sector" which will "improve wages and working conditions for American citizens, and also boost investment and economic development throughout such local communities." The Petitioner submitted letters from individuals indicating interest in working with her company, a business plan, recommendation letters, and industry articles and reports in support of her eligibility.

The Director determined, in part, that the Petitioner's initial filing did not demonstrate the proposed endeavor's national importance and issued a request for evidence. In response, the Petitioner provided additional industry articles and reports and referred to her previously submitted documentation. She asserted that the record demonstrates her plan to continue her career in the United States as a clinical nurse specialist/entrepreneur is "an area of national importance because of the ripple effects it generates upon national matters, such as the urgent shortage of nursing professionals, which is threatening the functionality of the U.S. healthcare system, as well as the health and well-being of Americans."

In denying the petition, the Director concluded that though the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate the importance of the Petitioner's

endeavor on a national scale. The Director noted that while the submitted evidence emphasized the significance of the nursing field and relevance to U.S. interests, the record did not demonstrate that the potential prospective impact of the Petitioner's endeavor would extend beyond her future company, patients, and business partnerships, and have national implications. In addition, the Director found that the evidence did not establish the Petitioner's endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner did not show that benefits to the regional or national economy resulting from her proposed endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Regarding the Petitioner's claim that her proposed endeavor meets the national importance prong due in part to the nursing shortage in the United States, the Director noted that a shortage in a particular field does not render the proposed endeavor nationally important under the *Dhanasar* framework.

On appeal, the Petitioner claims that the Director erred by requiring a stricter standard of proof than preponderance of evidence, imposing novel substantive and evidentiary requirements, and failing to fully consider the submitted documentation. The Petitioner reiterates her professional experience and argues the submitted evidence establishes her proposed endeavor has national importance.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their 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.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she meets the first prong of the *Dhanasar* framework.

Upon review, the record supports the Director's determination that the Petitioner did not demonstrate the national importance of her proposed endeavor. 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." *See Dhanasar*, *Id.* at 889. Generally, we look to evidence documenting the "potential prospective impact" of a petitioner's work. The Petitioner submitted documents addressing the importance of the nursing profession, home health care, and entrepreneurial initiatives, and the impact of these activities on the U.S. economy and society. She also provided recommendation letters describing her professional experience and accomplishments. However, the Petitioner's skills, expertise, 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 she proposes to undertake has national importance under *Dhanasar*'s first prong. Additionally, the articles and reports failed to establish that the Petitioner's specific endeavor has national implications, significant potential to employ U.S. workers, or otherwise offers substantial positive economic effects for the United States.

We noted in *Dhanasar* that "we look for broader implications" of the proposed endeavor and 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. Although the Petitioner discusses the value and importance

of providing quality home healthcare, *Dhanasar* requires us to focus on the "the specific endeavor that the foreign national proposes to undertake," not the importance of the field, industry, or profession in which the individual will work. *Id.* at 889.

Further, the Petitioner did not demonstrate that her company's operations would provide substantial economic benefits to California, the region, or the U.S. economy more broadly at a level commensurate with national importance, nor did she demonstrate that her company's activities would substantially impact job creation and economic growth, either regionally or nationally. The Petitioner's business plan projects that her company will have 68 employees, $20.4 million in revenue, and $19.7 million in operating costs during the first five years of operation. The plan also indicates the working capital and start-up funds are "covered by the equity invested in the company by [the Petitioner], private funds[,] plus the reinvestment of the net profit," and the initial capital investment of $190,000 will be comprised of the Petitioner's "funds saved throughout her career alongside" two other individual investors. Upon review, the record does not sufficiently show how the company will pay salaries and other operational expenses and the business plan lacks sufficient evidence to show adequate investment funds, either from the Petitioner or other entities.

We note the record contains letters from the individuals referenced in the business plan as investors who will provide private funds as part of the company's initial working capital. Though the letters indicate the individuals are interested in investing in the Petitioner's company, they do not specify an investment amount. Further, the record lacks evidence of committed funds from the potential investors or contractual commitments from individuals or organizations to work with the proposed company or obtain the prospective services. Regarding the Petitioner's assertion that she will provide her own funds saved throughout her career, the supporting documentation includes a one-page statement from a Brazilian bank reflecting total account balances for September and October 2022. However, the documentation does not clarify the currency referenced in the bank statement or establish these funds will be available for future capital investment in her proposed company. The Petitioner also submitted a one-page summary showing the Petitioner is a secondary joint owner of a U.S. bank account, which was opened in October 2022, and had a $23,000 balance as of November 2022. Due to the business plan deficiencies and lack of sufficient evidence to support the financial and employment projections, the Petitioner has not demonstrated that her company has significant potential to reach the stated economic impact objectives, including in the referenced HUB zones; employ U.S. workers; or otherwise offer substantial positive economic effects.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make 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.