U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34393646

Date: DEC. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a minister, 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 as an advanced degree professional. The Director dismissed a subsequent motion to reopen and reconsider for failing to meet the respective motion requirements. 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. 8 C.F.R. § 204.5(K)(2). 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. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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. *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,[2] 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. Procedural Background

On the Petitioner's Form I-140, she listed her proposed employment as a chaplain in the U.S. Armed Forces. In the initial decision, the Director referenced the Petitioner's educational background, but determined that her doctoral degree in political science and master's degree in military leadership, both foreign degrees, did not meet the [redacted] requirements for chaplains. The Director listed [redacted] chaplain and [redacted] chaplain candidate program requirements. The Director then found that the Petitioner did not establish she attained the minimum requirement of a U.S. graduate degree in the proposed endeavor and therefore she was not a member of the professions holding an advanced degree in the field of the proposed endeavor. In the Director's subsequent decision on the Petitioner's motion to reopen and reconsider, the Director first stated that the motion did not state new facts therefore the motion to reopen requirements were not met. Next, the Director reviewed the Petitioner's arguments and found that she did not meet the requirements of a motion to reconsider. The Director noted that the Petitioner's degrees were not in the field of the proposed endeavor and the Petitioner was neither a law permanent resident (LPR) nor a U.S. citizen, which are requirements to become a [redacted] chaplain or to enter the [redacted] chaplain candidate program. The Director stated that the Petitioner did not explain how USCIS misinterpreted policy, law or precedent decisions, and that the grounds of the denial were not overcome.

B. EB-2 Classification

We disagree and hereby withdraw the Director's conclusion that the Petitioner is not an advanced degree professional. As mentioned above, an advanced degree is any U.S. academic or professional

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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

degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). The record includes a diploma and diploma supplement reflecting that the Petitioner received a Magistra fur Militarische Fuhrung (master's degree in military leadership) from the [redacted] in September 2006. The record also includes a decision on conferment of academic degree, diploma supplement, and doctoral degree certificate reflecting that the Petitioner received a Doktorin der Philosophie (doctoral degree in political science) from the [redacted] in January 2011.

The AACRAO EDGE database determines whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge. It contains extensive information regarding the Austrian educational system. Specifically, it provides that the first-level university degree is the *Bakkalaureaus/Bakkalaurea* which requires at least 180 European Credit Transfer System (ECTS) credits (approximately 6 semesters); the second-level university degree is the *Magister/Magistra* which requires a *Bakkalaureaus/Bakkalaurea* for admission and requires 120 ECTS credits (approximately 3-4 semesters); and the third-level university programs are doctoral programs leading to the *Doktor/Doktorin*, which requires at least 240 ECTS credits of coursework, passing *Rigorosen* (comprehensive) examinations, defense of a dissertation, and a *Magister/Magistra* for admission.

Based on the information from the EDGE database, along with the submitted education records, the record establishes that the Petitioner's doctoral degree in political science is a foreign equivalent degree above that of a U.S. bachelor's degree. Therefore, the Petitioner has established eligibility for the EB-2 classification as an advanced degree professional.[3]

C. National Interest Waiver

On appeal, the Petitioner asserts that she meets the national interest waiver requirements. Therefore, we will address this claim. The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance.

With respect to the Petitioner's proposed endeavor, she initially stated that she "will enter the United States to enlist in the United States Armed Forces to become a military chaplain." She also mentioned "I desire to serve as a military chaplain because I find great joy in caring for the spiritual well-being of soldiers regardless of their religious backgrounds, ministering to their needs and helping them meet challenges in areas like religion, morals, morale . . . I would like to serve people who are in spiritual and emotional need and who might never want to walk into a church. In other words, as a chaplain I am called to go where a church cannot go, or where a church will not go." The Director issued a request for evidence (RFE), as the Director determined that the Petitioner's statement lacked specificity regarding the proposed endeavor which impeded a determination that the proposed endeavor has substantial merit. In response to the RFE, the Petitioner stated that her proposed endeavor is to serve as a military chaplain in the [redacted]

[3] On appeal, the Petitioner submits a Master of Divinity degree that she received in April 2024 from [redacted] in [redacted] We will not consider this degree as it was obtained after the Petitioner filed her Form I-140 petition in July 2022. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has established that she is an advanced degree professional as discussed in the decision.

[redacted] specifically referring to the [redacted], and the "specific projects [she] may be ordered to work on or on what missions she may be deployed are not yet known and will be decided by the [redacted] upon her appointment as a chaplain. For obvious national security reasons, the [redacted] does not provide detailed descriptions of a soldier's future missions or possible deployments. No dates, locations, or specific itineraries are available." The Petitioner also reiterated her initial description of the proposed endeavor and included a list of job duties for chaplains from Department of Defense Instruction 1304.28: The Appointment and Service of Chaplains. The duties include, but are not limited to, advising individuals on religion, morals, ethics, well-being, and morale; meeting the religious requirements and care for the spiritual needs of service members, potentially in isolated or combat environments; advising combatant commands, commanding officers, and organizations on religion, morals, ethics, morale, and well-being in the unit, including religion's impact on military operations; and visiting workspaces, counseling on military life, providing crisis prevention and response, and providing religious training and education. On appeal, the Petitioner states that she intends to "enlist in the [redacted] and be appointed as a Military Chaplain so that she can serve our nation's service members, advise U.S. military commanders on how to navigate complex religious terrain to successfully carry out important military operations, and act as a liaison and bridgebuilder between local religious communities and U.S. military forces."

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of 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. *Id.* Here, the Petitioner's proposed endeavor is to work as a military chaplain in the [redacted] where she will provide religious services to military members. As such, the record establishes that her proposed endeavor has substantial merit.

The Petitioner, however, has not established that the proposed endeavor has national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner contends that her proposed endeavor is nationally important because there is a shortage of military chaplains, particularly female ones, she will support U.S. national security interests by advising her commander, and she will save the lives of service members and their families by providing emotional, moral, and spiritual support services. She states that military chaplains have taken on critical ambassador roles between U.S. commanders and Afghani and Iraqi communities where chaplains were key in resolving misunderstandings, saving lives, and advancing operational goals. We first note that the specifics of the Petitioner's proposed endeavor are not clear. As she mentioned, the "specific projects [she] may be ordered to work on or on what missions she may be deployed are not yet known and will be decided by the [redacted] upon her appointment as a chaplain." However, we will still review whether the general duties of a military chaplain that she would engage in have national importance as outlined in *Dhanasar*.

The Petitioner has described the importance of the field she is working in. However, working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Id.* Rather, when determining whether the proposed endeavor has 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. Thus, while we acknowledge that military chaplain field is important, this fact is insufficient to establish the national importance of her proposed endeavor.

The Petitioner refers to a letter from a retired colonel of the [redacted] about the shortage of military chaplains and how the Petitioner has the background to help meet this need, and a letter from a senior pastor who emphasizes the Petitioner's potential to alleviate challenges within the military. The Petitioner mentions that the [redacted] Institute for Religious Leadership is seeking chaplains who match the diversity of the [redacted] population, recruiting initiative has been introduced to address this issue, and military chaplain numbers are still plummeting nationwide. The Petitioner describes the reasons why people are not entering the U.S. military, including obesity, educational deficits, criminal or drug records, and a culture that does not encourage or value service; and that less than one percent of Americans meet the age and educational requirements to become a [redacted] chaplain. We acknowledge the claims related to the shortage of military chaplains, including female chaplains. However, the alleged shortage of occupations or occupational skills does not render the Petitioner's 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.

The Petitioner mentions her background in military leadership and expertise in advising commanders on how to navigate sensitive terrain, and how that makes her an exceptional candidate to be a military chaplain. The Petitioner highlights letters from military leaders. The letters collectively assert that the Petitioner is qualified for the position. The Petitioner's skills, knowledge, and prior work in her field 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 first prong of the *Dhanasar* framework, however, focuses on the proposed endeavor and not on the Petitioner's education and prior work in the field. The national importance of the Petitioner's proposed endeavor stands separate and apart from her education, skills, and job experience. *Id.*

The letters from military leaders collectively point out that the Petitioner would provide spiritual support to servicemembers resulting in benefits to national security, she would enhance the strength and diversity of the [redacted] and her working as a military chaplain would be in the best interests of the United States. The Petitioner refers to statistics about the number of suicides and mental health disorders in the military and how servicemembers engaged in spiritual practices are less likely to have these issues. The Petitioner states that the prospective impact of even a single military chaplain could make is of national importance as they are providing spiritual care to the heart of the nation's defense. While the Petitioner's statements reflect her intention to provide chaplain services to servicemembers, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor 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. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond the individuals she would assist to impact the military chaplain field or the U.S. military more broadly at a level commensurate with national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them. *See INS v.*

Bagamasbad, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.