U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34817251

Date: FEB. 7, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a sales representative specializing in pharmaceutical products, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See 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.

The Director of the Texas Service Center denied the petition, concluding that the evidence did not establish that a waiver of the job offer requirement, and thus of a labor certification, is in the national interest. 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 immigrant 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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. Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] 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).

- 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.

II. ANALYSIS

The Director did not make a finding in the decision as to the threshold question of the Petitioner's eligibility for the underlying EB-2 immigrant classification, however the Director stated in a request for evidence (RFE) that the Petitioner qualifies for the classification as an advanced degree professional. Based upon his bachelor's degree in business administration and five years of full-time, progressive, post-baccalaureate experience in the specialty, we agree. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, is in the national interest.

The Petitioner intends to own and operate a Diagnostic Solutions and Supplies Company for Diabetes Care in an economically depressed part of Florida. The objective of his venture is to offer equipment to health professionals that assists in the accurate diagnosis and effective treatment of diabetes, and to sell a variety of products and medicines to the diabetic public in general. Once the business solidifies, the Petitioner hopes to be able to expand throughout the state of Florida and serve other economically depressed regions that need greater support for the development of the local economy.

The Petitioner submitted evidence of his qualifications, documentation regarding the economy in Florida, a business plan, support letters from colleagues and potential investors. In response to a Request for Evidence (RFE), the Petitioner resubmitted much of the previously submitted documentation with some additional evidence, such as financial information pertaining to potential investors. The Director found that the proposed endeavor has substantial merit. But the Director determined that the Petitioner has not established that his proposed endeavor is of national importance, that he is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to waive the requirements of a job offer, and thus of a labor certification.

Before we turn to the merits of the Petitioner's eligibility for a national interest waiver under the Dhanasar framework, we note one claim the Petitioner raises on appeal. The Petitioner claims the Director erred in saying that she considered an Expert Opinion Letter, because an expert opinion letter was not submitted in the record. We review the record de novo and we note that the Petitioner did list an expert opinion letter as a supporting document to his national interest waiver application and provided numerous letters of support together with resumes of the supporters and recommenders who are pharmaceutical executives and medical doctors, providing their resumes and submitted letters from potential investors with their financial documentation. We find the Petitioner was not prejudiced by this error. It is not enough to generally assert errors in a decision. The Petitioner must also establish that they were prejudiced by any claimed errors. Errors can be overlooked when they had no bearing on the substance of an agency's decision. See e.g., Aguilar v. Garland, 60 F.4th 401, 407 (8th Cir. 2023) (citing Prohibition Juice Co. v. United States Food & Drug Admin., 45 F.4th 8, 24 (D.C. Cir. 2022)).

We acknowledge that the Director's decision does not directly discuss every piece of evidence the Petitioner submitted and is brief in its analysis of the specific deficiencies in the evidence. However, the Director is not required to discuss every piece of evidence in the record to be sufficient. Following review, we conclude that the decision is sufficient and specific enough to provide the Petitioner a fair opportunity to contest the decision and the AAO an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Moreover, we note that the remedy that the Petitioner seeks based upon this claimed deficiency is that USCIS to "re-evaluate" his application. We have conducted a de novo review and considered the evidence in the record in full. While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one.

A. Substantial Merit of the Proposed Endeavor

We turn now to the Petitioner's specific claims of eligibility under each of the requisite Dhanasar prongs, beginning with whether he has established the substantial merit of his proposed endeavor. The Director found the Petitioner established that the proposed endeavor has substantial merit. Upon de novo review, we agree that the Petitioner has established this requirement.

B. National Importance of the Proposed Endeavor

We turn next to whether the Petitioner has established that the proposed endeavor has national importance. In making this determination, we consider the proposed endeavor's potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. Id. Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. Id. at 890.

The Director found that the Petitioner did not demonstrate the national importance requirement because he did not show that the proposed endeavor stands to sufficiently extend beyond the individuals the Petitioner's company would serve, to impact the field more broadly. Additionally, the Director noted that, throughout the record, the Petitioner emphasizes the position that they propose to fill and the importance of the particular field of the proposed endeavor. However, in determining national importance, the analysis should focus on the impact of what the beneficiary intends to do rather than the specific occupational classification.

On appeal, the Petitioner asserts that his proposed endeavor has national or even global implications claiming he intends to set up his company in an area of economic depression, offer health professionals equipment to help with the precise diagnosis and effective treatment of diabetes, and provide a variety of innovative products and medicines for the diabetic public in general. He claims his endeavor will contribute technological advances to the diabetes health sector and enrich the population with knowledge about diabetes through educational lectures and social actions on caring for the disease. Then, the Petitioner generally discusses the prevalence and cost of diabetes in the United States, the insufficient access to health care in economically depressed regions such as where he will set up his

endeavor, his "knowledge sharing," and contributing to the depressed community where his endeavor will be located with job creation and promoting the pharmaceutical sector.

The Petitioner also notes that he has letters from two investors expressing "real intention" to invest in his venture. We observe this evidence supports whether the Petitioner is well-positioned to advance the proposed endeavor, not the national importance of the endeavor. We also note that the letters from potential investors did not commit a specific amount of money, though the Petitioner's brief states that one investor will commit $50,000. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998).

The Petitioner also estimates creating 6 new job opportunities, paying salaries in years one through five cumulatively of $1,968,290.00, and paying a projected $792,090.50 in taxes over the first five years of his endeavor. However, the Petitioner has not explained the bases for the economic projections in the business plan and the economic analysis, nor does the record contain evidence supporting these claims. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. Matter of Chawathe, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. See id. Here, lack of supporting details detracts from the credibility and probative value of the business plan and economic analysis.

The business plan does not estimate an anticipated number of patients that may be reached, but only that the business consumers will be medical clinics, hospital units, teaching hospitals, and the diabetic public. As such, we are not able to evaluate whether the health-related impacts of the project may rise to the level of national importance.

On appeal, the Petitioner asserts his endeavor will transmit knowledge using a knowledge management system to employees, health professionals and the diabetic public. However, the record does not sufficiently show that this undertaking has broader implications for his field, as opposed to being limited to those who participate in his lectures, training courses, or knowledge management system. While the Petitioner's plan to share knowledge has merit, the record does not sufficiently demonstrate that the teaching or instructional activities offers benefits that will impact the diabetic care more broadly. Likewise, 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.

For the reasons stated above, we conclude that the Petitioner has not demonstrated the national importance of his proposed endeavor, and thus he has not established his eligibility under the first prong of the Dhanasar framework.

Because the Petitioner has not established that his proposed endeavor meets the national importance requirement of the first prong, we need not address whether he has established his eligibility under the second and third Dhanasar prongs. We reserve our opinion regarding whether the record satisfies the second or third Dhanasar prong. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Because the Petitioner has not met the requisite first prong of the Dhanasar analytical framework related to national importance, we conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.