U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 29137244

Date: FEB. 9, 2024

Appeal of Texas 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 or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 although the Petitioner qualified as an individual of exceptional ability, 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. 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.

After a petitioner first demonstrates qualification for the underlying EB-2 visa classification, they must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- 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.

The Petitioner's proposed endeavor is to be a dental surgeon in the United States. She states that her abilities as a dental surgeon will "help meet the demand and ameliorate the shortage of dental health professionals in the country, provide highly skilled services to esteemed dental practices, provide educational lectures to empower other professionals in the field, and improve the oral and overall

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

health of U.S. citizens." She further states that her "proposed endeavor is to offer my specialized services in the areas of Aesthetic dentistry, Dental prosthesis, Periodontics, Botulinum toxin, and Minor oral surgery, improving oral health in all aspects, such as physical, functional, nutritional or psychosocial." The Petitioner did not state whether she intends to pursue this endeavor through self-employment or whether she plans to seek employment at a company. However, the Petitioner did submit correspondence with organizations seeking to hire dentists as evidence of potential job opportunities in response to the Director's request for evidence (RFE).

The first prong of the *Dhanasar* framework, 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.

In her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor has national importance.

On appeal, the Petitioner contends that the Director did not properly address all the evidence and provides the same information as in her response to the Director's RFE to establish the national importance of her proposed endeavor. However, the Petitioner relies, in large part, on her expertise and record of success in previous positions which are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work.[2] Here, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor, however admirable, 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. Similarly, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her future patients and employer(s) to impact the dental industry more broadly at a level commensurate with national importance.

The Petitioner also did not show that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence

[2] We note that in response to the Director's RFE, the Petitioner added a general research component to her proposed endeavor. Not only are we left to question how much time, if any, would be spent on research given the submitted information regarding potential job opportunities as a dentist, but more importantly, the Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her dental position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

We also reviewed the Petitioner's reference letters. The authors praise the Petitioner's abilities and the personal attributes that make her an asset in the dental industry. While they evidence the high regard the Petitioner's colleagues have for her and her work, they do not offer persuasive detail concerning the impact of her proposed endeavor or establish how such impact would extend beyond her employer and/or patients. As such, the letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

Finally, we reviewed the expert opinion letter from a university associate professor in the field of dentistry field. In addressing the first prong of the *Dhanasar* framework, we note that the author focuses on the importance of the dental industry in the United States. The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The opinion letter does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in her field, U.S. public health benefits, or substantial positive economic effects for our nation that rise to the level of national importance.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for a national interest waiver, as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976). We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[3]

**ORDER:** The appeal is dismissed.

[3] Although we will not address this issue further, we note that the Director did not explain her conclusion that the Petitioner qualifies as an individual of exceptional ability. While we may agree that the Petitioner satisfied at least three of the initial evidentiary criteria, she did not sufficiently establish how her education, license to perform work as a dentist, and membership in the [redacted] show that she possesses a degree of expertise significantly above that ordinarily encountered in her field. The Petitioner should be prepared to address this in any future filings.

Moreover, the Petitioner does not address the Director's conclusion that she does not possess an advance degree. We therefore deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).