U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28541613

Date: FEB. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a medical professional, 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 the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Because this 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 remaining *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 alternative issues on appeal where an applicant is otherwise ineligible).

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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,[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.

II. ANALYSIS

The Director determined that the Petitioner was a member of the professions holding an advanced degree.[3] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he is a general practitioner with nine years of experience in a "problem-solving capacity both in the emergency area and in the outpatient and hospitalization areas." He states that his proposed endeavor is to "work as a primary care clinician and emergency consultant" in health professional shortage areas.[4]

With the initial filing the Petitioner submitted evidence of his education and experience, his resume, a personal statement, and a professional plan describing his claimed eligibility for a national interest waiver. He also submitted recommendation and support letters, an expert opinion letter, and articles and industry reports describing a shortage of healthcare professionals in the United States.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes an updated professional plan dated December

[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 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).

[3] The record demonstrates that the Petitioner holds the equivalent of a U.S. advanced degree awarded in 2012. *See* 8 C.F.R. § 204.5(k)(3)(i)(A).

[4] At the outset we note that Petitioner does not appear to be a licensed physician in the United States. Although the Petitioner states that his proposed endeavor is to provide patient care, "specifically in low-income population and medically underserved areas inside the state of Florida," the record does not include evidence that the Petitioner is a licensed healthcare professional in Florida. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

2022, a second expert opinion, evidence of his certifications as a registered medical assistant and surgical assistant, and evidence demonstrating that Florida has a shortage of healthcare professionals.

In his updated personal statement, the Petitioner outlines his eligibility for a "physician national interest waiver." He states that he "agrees to work full-time in a clinical practice, with a term of service of 5 years," and "will provide services either in a Health Professional Shortage Area (HPSA), a Health Care Limited Access Area (MUA), or Veterans Affairs facility, or for specialists in a Physician Shortage Area (PSA)."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit. However, he concluded that the Petitioner had not demonstrated that his proposed endeavor has national importance, that he is well-positioned to advance his proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director determined that the record did not demonstrate that the Petitioner's proposed endeavor will have broader implications in the field of medical education, practice or research. The Director also noted that the Petitioner's December 2022 professional plan appeared to indicate that he is seeking eligibility as a physician national interest waiver, although the initial evidence submitted with the petition did not request this designation.[5] The Director cited *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998), stating that "a petitioner may not make material changes to a petition that has already been filed."

Additionally, the Director determined that the Petitioner did not demonstrate that he is well-positioned to advance his proposed endeavor. He noted that the Petitioner's certifications as a registered medical assistant and surgical assistant "do not establish [that he] has made progress toward working as a general practice physician, which has different education and licensure requirements." The Director further concluded that the Petitioner had not demonstrated national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director did not consider critical evidence. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

[5] Section 203(b)(2)(B)(ii) of the Act provides that a waiver of the job offer requirement shall be afforded to a physician who meets several conditions, including that a Federal agency or a state department of public health has determined that his work is in the public interest.

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 Id.* In *Dhanasar*, we further 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.

On appeal, to support the claimed national importance of his proposed endeavor, the Petitioner references the evidence he submitted in response to the RFE. Specifically, the Petitioner states that his December 2022 professional plan, the expert opinion letter from [redacted] and articles addressing the shortage of healthcare professionals as an issue of national concern establish that his proposed endeavor is of national importance.

Although the Petitioner states that his professional plan includes a detailed description of his proposed endeavor, we disagree. The Petitioner's professional plan includes several sections discussing his education, experience, professional skills, certifications, and values. He also includes sections describing the profession of doctor generally, the shortage of doctors in the United States, employment and wage statistics for physicians, and other statistics and demographics of physicians in the United States, such as languages spoken other than English. The only section of the Petitioner's professional plan that addresses what he plans to do in the United States is titled "Physician National Interest Waiver." As noted above, in this section the Petitioner states his intention to work full-time in a clinical practice and to provide services in a HPSA, MUA, PSA, or for the U.S. Department of Veterans Affairs.

As indicated by the Director, the instant petition does not indicate that the Petitioner is seeking a physician national interest waiver under Section 203(b)(2)(B)(ii) of the Act. On appeal the Petitioner asserts that the Director "erroneously applied the special 'physicians' national interest waiver legal standard to the present petition, rather than applying the framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884. Upon de novo review, we conclude that the Director properly analyzed the evidence in the record under the *Dhanasar* framework.

The Petitioner also references an expert opinion prepared by [redacted] We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] states generally that the Petitioner "will contribute to the medical field ... alleviat[ing] the crisis of the COVID-19 pandemic ... and provid[ing] medical treatments for American patients." However, [redacted] does not discuss any details of the Petitioner's specific proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory

opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the national or global implications on patient care, the potential to employ U.S. workers, or the positive economic effects. Rather, his opinion is general in nature, concluding that, the Petitioner "is an established professional in an area of substantial merit and national importance" without providing a substantive analysis.

On appeal, the Petitioner asserts that the broader implications of his proposed endeavor are evidenced by addressing health professional shortage areas, improving access to healthcare, meeting the needs of high-risk populations, having an economic impact in economically depressed areas, promoting overall public health, and a significant potential to employ U.S. workers. However, the Petitioner does not provide a business plan to describe how he intends to offer his services. The Petitioner's personal statements are not specific or detailed enough for us to assess the potential prospective impact of it in the abstract, without considering the specific ways in which the Petitioner intends to implement this goal. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added).

The Petitioner claims that the denial is deficient because the Director did not consider the entirety of the evidence in the record. While we agree that an adjudicator should consider the relevant evidence in the record, the Petitioner does not sufficiently support his claim that there was relevant evidence that the Director did not consider. The Petitioner does not cite to or describe which specific evidence was not given consideration. We note that the decision discusses each of the claimed pieces of evidence the Petitioner lists in his brief. Nevertheless, we address them again herein.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general shortage of healthcare professionals. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[6] *See INS v. Bagamasbad*, 429 U.S. at 25.

[6] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he is well-positioned to advance his proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the first and third *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.