U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29808583

Date: FEB. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. See 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 although 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. 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 visa 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. 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). Dhanasar states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion[1], grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner seeks to work as a physical therapist and therefore support the health industry in the United States. 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 of a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

The Director issued a request for evidence (RFE) requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In response, the Petitioner provided

[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).

additional documents including a professional plan explaining her plans to work as a physical therapist and to develop and research "new and innovative physical therapy techniques associated with aesthetic and muscular paralysis disorders." She also asserted that she intended to work with healthcare organizations to provide specialized services and train other professionals in the field.

The Director determined that the Petitioner's proposed endeavor has substantial merit. The Director found however that the Petitioner did not submit evidence demonstrating the endeavor's national importance. On appeal, the Petitioner reiterates the same arguments and resubmits previously submitted documents along with additional training documents to demonstrate her eligibility for the national interest waiver and underscore the sufficiency of the submitted evidence. For example, the Petitioner contends that she has presented sufficient evidence to overwhelmingly fulfill all three prongs of the Dhanasar framework. She outlines her intention to continue her physical therapist career by focusing on the research and development of "innovative physical therapy techniques associated with aesthetic physiotherapy, and the treatments of Bell's [p]alsy and [s]cars." Additionally, the Petitioner explains that she plans to share her skills and innovative methods within the physical therapy community by offering training to fellow physical therapists and engaging in talks, lectures, and speeches. The Petitioner maintains that her objective is to create innovative approaches to enhance and expedite traditional procedures.

The Petitioner further highlights her experience in adjusting and implementing existing physical therapy techniques to improve her patients' conditions, training her colleagues in the integration of aesthetic physiotherapy, and presenting her techniques at talks and lectures.

As previously mentioned, the first prong of the Dhanasar test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. Matter of Dhanasar, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. Id. An endeavor's national importance is determined by examining its potential impact. Id. An endeavor may qualify if, for instance, it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. While we acknowledge the physical therapy industry's importance, the relevant question when determining whether a proposed endeavor would have national importance is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. Id. at 889-90. Here, the record does not establish that the Petitioner's proposed endeavor's impact will be nationally important.

The Petitioner claims that her endeavor will be nationally important due to her extensive experience and education as well as her physical therapy techniques that she shared with others. However, this establishes the merit of the endeavor, not its national impact, which is a separate consideration under the first Dhanasar prong. Matter of Dhanasar, 26 I&N Dec. at 889-90. In Dhanasar, the noncitizen's work as a science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. Id. at 893. Similarly, as explained above, the Petitioner has not established that her endeavor will have an impact that extends beyond her patients and trainees to the broader field of physical therapy or healthcare. Moreover, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first Dhanasar

prong. These experiences are material to Dhanasar's second prong—whether an individual is well positioned to advance a proposed endeavor—but they are immaterial to the first Dhanasar prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. See id. at 888-91.

The record also includes an expert opinion letter, support letters, and declarations attesting to the Petitioner's education, work experience, and achievements in the physical therapy field. In particular, the expert opinion letter affirms the Petitioner's eligibility for the national interest waiver based on the Petitioner's prior accomplishments and education. It praises the Petitioner's innovative techniques and emphatically asserts that the Petitioner's endeavor is in an area of substantial merit and national importance. Similarly, the letters of support and declarations written on the Petitioner's behalf commend the Petitioner's outstanding work experience and highlight her innovative methods in assisting her patients. While we recognize the Petitioner's work experience and contributions to her patients, the letters do not provide specific examples of how the Petitioner's work has influenced the physical therapy industry broadly or would advance the interests of the physical therapy industry or the U.S. healthcare industry beyond the patients she would treat. As previously stated, the Petitioner's work experience and achievements relate to the second Dhanasar prong, which is concerned with the Petitioner's ability to advance her endeavor. They do not establish what impact her endeavor will have.

In addition, the Petitioner highlights the national importance of her proposed endeavor and the healthcare industry by pointing to industry and governmental reports on her endeavor and other related topics. The materials underscore the significance of the physical therapist occupation and address the shortage of physical therapists in the United States. The Petitioner maintains that she will use her skills and expertise to alleviate the shortage. Nonetheless, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the proposed endeavor's specific impact. Id.; see generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policymanual. We further note that the Petitioner has not provided sufficient evidence that her endeavor would resolve the shortage or that her endeavor would stand to provide substantial economic benefits in Florida or the United States. Nor does she demonstrate that the benefits of her proposed U.S. employment would reach beyond her patients and colleagues to affect her field or the United States more broadly.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in Dhanasar. 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).

III. CONCLUSION

As the Petitioner has not met the Dhanasar analytical framework's requisite first prong, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.