U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28948826

Date: FEB. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an occupational therapist, clinical director, and entrepreneur, 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). 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. The Director concluded that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement 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. 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 for the underlying classification, 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. While neither the statute nor the pertinent regulations define the

[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.

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 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 Petitioner proposes to establish a rehabilitation clinic business in the United States having previously worked as an occupational therapist in Brazil. The Director determined that the Petitioner established eligibility for the underlying EB-2 immigrant as a member of the professions holding an advanced degree. We agree with the Director's determination.[3]

However, the Director determined that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish she is well positioned to advance the proposed endeavor under the second prong of Dhanasar, or that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a rehabilitation clinic business for which she would be its chief executive officer and clinical director. The business plan explains that the clinic would focus on adult and child neurological and orthopedic rehabilitations. The clinic's services would include family health and wellness, and physical, occupational, psychological, holistic alternatives, and speech therapy services. The Petitioner emphasizes that the business would "serve not only the patients but

[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] To demonstrate the Petitioner is an advanced degree professional, she submitted her diploma indicating she earned the title of bachelor in occupational therapy from [redacted] in Brazil in August 2004; the corresponding academic transcripts; an academic evaluation; and letters from her previous employers. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree in occupational therapy and at least five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

also their families and friends" maintaining "[a] successful rehabilitation program's core has a strong and informed support system." We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor has implications beyond her business at a level sufficient to establish the national importance of the endeavor. Therefore, the Director found that the Petitioner did not establish her burden in meeting the national importance element of the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not considering the totality of the evidence. With respect to national importance, the Petitioner specifically emphasizes her personal statements; the business plan describing the projected economic impact and job creation; opinion letters from independent professionals in her field; and articles and reports discussing challenges of the rehabilitation and healthcare industries, the shortage of professionals in her field, and government initiatives related to community health workers assisting minorities. Upon de novo review, we find the Petitioner did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

On appeal, the Petitioner contends that her personal statement and business plan detail the national importance of her proposed endeavor. Arguing her business would have economic, health, and social welfare benefits, the appeal mainly restates portions of her personal statement and business plan relating to these claimed benefits. The Petitioner's statements and business plan describe her academic credentials and professional experience; her ownership of the business and its initial source of capital; the business' family health and rehabilitation therapy services to be offered to its patients; market demand for and analysis of healthcare, alternative healthcare, occupational therapists, and rehabilitation centers; the business' strengths, such as multilingual services, accessibility, the Petitioner's expertise, and its personalized approach; and the business' projected marketing strategies, personnel, and finances.

The Petitioner's personal statement stresses her academic credentials and professional experience. For instance, she states, "[M]y company has the ability to make an impactful contribution to the U.S. economy and enhance the health and well-being of its citizens by applying my expertise in [o]ccupational [t]herapy." However, the Petitioner's reliance on her academic credentials and professional experience to establish the national importance of her proposed endeavor is misplaced. Her academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of

Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. See id. at 889.

To demonstrate the business' potential economic benefits, she argues on appeal that the business plan presents "sufficient information on . . . the number of individuals that her business plans to hire, train, and support; and . . . its impact on the regional and/or national population at a level consistent with national importance." She argues that since it provides details of the business' intended personnel and finances, it "is a complete document that proves by the preponderance of the evidence . . . that [she] will provide employment for the U.S. public while also providing her services to U.S. companies in a profitable manner. Therefore, [she] has supported her claim that the specific endeavor that she proposes to undertake has significant potential to employ U.S. workers AND offers substantial positive economic effects for our nation." (emphasis omitted).

The business plan indicates the clinic would provide economic benefits to the United States by creating jobs for U.S. workers in economically depressed areas, increasing revenue to the U.S. and local economies, and generating taxes for the United States and local communities. The business plan states that the clinic will be located in [redacted] Georgia[5], and when the business expands, it will consider new locations in "economically depressed and rural areas" which would "bring substantial benefits to the domestic economy." However, the Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to the United States and to economically depressed areas of Georgia. The business plan projects that by its fifth year, the business will hire 17 employees, generate 27 indirect jobs, and generate taxes of over $252,000. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.

The Petitioner's claims that her rehabilitation clinic business will benefit the United States and local economically depressed economies has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic benefits to the United States or local communities. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. The record does not sufficiently document the potential prospective impact, including the asserted economic benefits to Georgia or the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 17 direct jobs, generating 27 indirect jobs, and generating taxes of over $252,000 by its fifth year in business rises to the level of national importance. Also, without sufficient documentary evidence that the Petitioner's proposed job duties as the chief executive officer and clinical director of her rehabilitation clinic business would impact the healthcare and rehabilitation therapy industries more broadly, rather than

[5] While documents submitted with the initial petition, including the Petitioner's statement, the business plan and independent opinions, indicate the clinic would be located in [redacted] Georgia, the appeal brief and corporate documents for the business indicate that its location is in [redacted] Georgia. The Petitioner's appeal does not provide an explanation or evidence to resolve these inconsistencies in the record. These unresolved inconsistencies in the record cast doubt on the credibility of the documents submitted. See Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies).

benefiting her business and her proposed patients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner maintains that her work would also have broader implications on U.S. healthcare and social welfare. The Petitioner's appeal and business plan stress that her clinic will improve the health of U.S. citizens; provide healthcare and therapy services in a critical sector; mitigate the shortage of healthcare professionals; transfer the Petitioner's healthcare knowledge to other U.S. citizens in the healthcare sector; and contribute to U.S. government initiatives related to the fields of science, technology, engineering, and math (STEM); entrepreneurship; and small businesses. The Petitioner argues the claimed benefits are evidenced in industry reports and articles. She claims the reports and articles show that her proposed endeavor aligns with government initiatives aimed at supporting healthcare and rehabilitation therapy services. The reports and articles relate to U.S. government initiatives supporting investment in the community health workforce; importance of occupational therapists; shortage of qualified healthcare workers; health benefits of family-centered health; and use of alternative therapies.

While we recognize the importance of rehabilitation therapies and a shortage of qualified rehabilitation healthcare professionals demonstrates substantial merit of a proposed endeavor, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the fields. The U.S. Department of Labor through the labor certification process directly addresses such shortages of qualified workers. The issue here is whether the Petitioner has established how her proposed endeavor would affect national rehabilitation therapy services and healthcare employment levels or the U.S. economy more broadly consistent with national importance. Merely working in the healthcare field or starting a rehabilitation services clinic business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889.

In Dhanasar, we 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. The industry reports and articles submitted do not discuss the projected U.S. economic impact, job creation, or benefits to the healthcare and rehabilitation therapy service fields specifically attributable to the Petitioner's proposed endeavor.

We also recognize the importance of the STEM fields and "the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security."[6] "With respect to the first [Dhanasar] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance. Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, . . . have sufficiently broad potential implications to demonstrate national importance."[7] However, the Petitioner has not

[6] See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual.
[7] See generally 6 USCIS Policy Manual, supra, at F.5(D)(2).

established that her proposed endeavor aims to advance STEM technologies or research. Also, the record does not show that her proposed endeavor would have an impact in a STEM field more broadly to establish its national importance.

Also, the Petitioner's intention to transfer her professional knowledge to the U.S. labor workforce to help alleviate the shortage of qualified healthcare professionals does not demonstrate the national importance of her endeavor. 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. Likewise, the Petitioner transferring her knowledge to others in her field would not rise to having national importance. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of rehabilitation therapy, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's business would impact the rehabilitation therapy field more broadly.

To further support the national importance of her endeavor, the Petitioner submitted two opinions, the first from [redacted] system director of palliative care for [redacted] and adjunct clinical professor of nursing for [redacted] in New York, and the second from [redacted] professor of biology at [redacted] in [redacted] Ohio. Both opinions stress the need for and the importance of occupational therapists, rehabilitation therapy services, and healthcare to the U.S. economy and social welfare. The opinions explain that the Petitioner's clinic would fill a need for important healthcare and rehabilitation therapy services, particularly since the services are needed for minority populations in the intended underserved areas. The opinions also provide information relating to the need for qualified occupational therapists and healthcare professionals; the importance of occupational therapy and rehabilitation therapies; health risks for minority populations, including Hispanics and Latinos; economic benefits of rehabilitation therapies and alternative medicine; expected growth of the rehabilitation therapies and alternative medicine; importance of entrepreneurs and small and medium-sized businesses to the U.S. economy; U.S. national initiatives supporting access to rehabilitation therapy and alternative healthcare centers; and the importance of healthcare services for the enhancement of the health of society.

However, the opinions do not focus on the Petitioner's specific endeavor having a prospective impact in the field of family healthcare and rehabilitation therapy services. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Stating that the Petitioner's work would support an important industry with a shortage of qualified professionals is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as an owner, chief executive officer and clinical director of her proposed rehabilitation therapy clinic business offers original innovations that contribute to

advancements in her industry or otherwise has broader implications for her field. The economic, healthcare, and social welfare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' rehabilitation therapy work and the claimed economic, healthcare, and social welfare results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under the second and third prongs. 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 requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.