U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29852953

Date: FEB. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a clinical laboratory technician, seeks second preference immigrant classification (EB-2) as a member of the professionals 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 immigrant classification. *See* 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 the Petitioner qualified for the EB-2 classification, but 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.

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 (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,[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 Ninth, Eleventh, and D.C. Circuit Courts (and Third

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

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

II. ANALYSIS

The Petitioner initially stated that "the field of my proposed endeavor is Clinical Laboratory Technician" and described her endeavor as following:

> My proposed endeavor is to work as a healthcare professional in the United States of America. I could use my experience to help Healthcare professional shortage area (HPSAs). The substantial merit of this endeavor lies in the fact that my work could help the country especially in an underprivileged area and also in an area with a huge shortage of healthcare professionals.

However, the Petitioner's evidence consists of general articles discussing the shortage of healthcare professionals in various parts of the United States and did not include any details and specific impact of her endeavor, such as where she will focus her healthcare work, how these areas are underserved or underprivileged communities, and what types of activities or services will be provided.

In response to the Director's request for evidence (RFE), the Petitioner expanded her endeavor to include establishing her own company and stated the following:

> Based on my solid academic and theoretical background and supported by an ascending and successful professional career, I intend to create a company to provide Clinical Laboratory services and quality control of blood components and their derivatives, in general for small and medium-sized companies, notably, health centers, laboratories, clinics and hospitals, who perform transfusion medicine.

In concluding that the Petitioner's endeavor has substantial merit but not national importance under the first prong of *Dhanasar*, the Director specified that the record does not show how this endeavor would offer substantial economic benefits or impact employment levels "regionally or nationally."

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in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Furthermore, the Director determined that the Petitioner has not demonstrated that her specific endeavor offers "original innovations that will contribute to the Clinical Laboratory Technician field more broadly."

On appeal, the Petitioner asserts that the Director incorrectly applied the national importance element by focusing on the endeavor's geographical impact and substantial economic effects, such as a potential to employ U.S. workers, rather than the nature of the proposed endeavor. The Petitioner cites to 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual: "officers may consider the evidence of the endeavor's potential significant economic impact, but merit may be established without immediate or quantifiable economic impact [. . .] officers should focus on the nature of the proposed endeavor, rather than only the geographic breadth of the endeavor." Contrary to the Petitioner's assertions, we conclude that the Director's decision properly adhered to the cited passage from the policy manual and the precedent decision, *Dhanasar*, in evaluating the Petitioner's endeavor.

Determining whether the endeavor has national importance according to *Dhanasar* can involve economic considerations, such as whether the endeavor has any "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. At the same time, we can also evaluate the endeavor without quantifiable economic impact, as *Dhanasar* contemplates that "[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.* at 889. Here, the Director considered both the endeavor's substantial positive economic effects to the regions where the Petitioner claims to operate her company and the endeavor's national or global implications in the field without focusing on the certain geographical area.

We agree with the Director that the Petitioner has not established that her company would operate on such a large scale that would benefit the U.S. economy rising to the level of national importance. The Petitioner generally claims that health professionals bring "positive effects on the nation's economy and productivity," but has not supported her claims with pertinent evidence showing that her company will generate substantial revenue or employment in a particular region or in economically depressed areas. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

We further agree with the Director that the Petitioner has not established her endeavor's specific impact extending beyond her business and clients to impact the field more broadly. The Petitioner has not provided details of her clinical laboratory services or corroborating evidence of how her diagnostic testing methodologies somehow differ from or improve upon those already available and in use in the United States, 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." *Id.* at 889. The record includes one recommendation letter from an adjunct professor at [redacted] Center in Brazil. However, the letter discusses the Petitioner's past participation in the professor's health technology classes, her commitment in learning, professionalism, and ability to perform laboratory procedures, instead of addressing the Petitioner's specific future endeavor and its broad impact in the field.

Much of the evidence submitted in support of the *Dhanasar*'s first prong addresses the industry or profession in which the Petitioner intends to work without discussing her specific proposed endeavor and its specific impact. In responding to the RFE, the Petitioner submitted various articles on the importance of diagnostic testing as well as the value of clinical laboratory technicians. On appeal, the Petitioner submits the Department of Homeland Security (DHS) STEM designed degree program list from July 2022, the Bureau of the Labor Statistics (BLS) occupational outlook handbook on clinical laboratory technologists, and articles on hospital staff shortage and the benefit of early cancer detection, claiming that her endeavor aligns with the important priorities of the government. Although we recognize the value of laboratory technologists and importance of STEM related professions, we emphasize that such evidence does not necessarily establish the national importance of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework. Moreover, there is no automatic grant of a national interest waiver for everyone who claims to be in a STEM field. The USCIS policy states that "with respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." 6 *USCIS Policy Manual* F.5(D)(2), *supra.*

When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake" and consider the endeavor's "potential prospective impact." *Dhanasar*, 26 I&N Dec. at 889. *See also* 6 *USCIS Policy Manual* at F.5(D)(1), *supra* (stating, as guidance, that in determining national importance, the officer's analysis should focus on what the beneficiary will be doing rather than the specific occupational classification).

The Petitioner also contends that "the adjudicating officer considered these two criteria (geography and employment) as absolute and disregarded the other criteria (national initiative) as establishing national importance." However, the Petitioner's reference to "a matter that a government entity has described as having national importance or is the subject of national initiatives" in the context of evaluating national importance is misplaced. Regardless of whether a generalized industry or field may have national importance or is the subject of a national initiative, the record must nevertheless establish how the specific endeavor may have "national or even global implications within a particular field" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90.

In *Dhanasar*, we gave significant weight to media articles and other evidence documenting the interest of the federal government in Dr. Dhanasar's area of proposed research. The evidence presented in that case included "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in the petitioner's specific research. *Id.* at 892. Here, the Petitioner has not provided similar evidence, such as the type of expert opinion evidence or letters from government entities specifically detailing how her endeavor impacts a matter that is a subject of national initiatives. None of the articles specifically address the Petitioner's endeavor or discuss the government's interest in promoting the use of the Petitioner's company. Therefore, we conclude that the Petitioner has not demonstrated the potential prospective impact of her specific endeavor to a matter that is the subject of national initiatives.

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, despite the Petitioner's assertions, the record lacks sufficient evidence regarding any national impact in the field or projected U.S. economic impact attributable to her future work. Accordingly, the Petitioner has not established her proposed work is of national importance.

Because the Petitioner has not met the first prong of the *Dhanasar*'s analytical framework, we decline to reach whether she meets the remaining second and third prongs under the *Dhanasar* framework, and further reserve our opinion regarding whether the Petitioner satisfies the second-preference eligibility criteria.[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[2] The Director concluded that the Petitioner qualified "for the classification" without providing analysis on the issue. Contrary to such determination, the Director's RFE dated January 9, 2023, found that the Petitioner is not eligible as an individual of exceptional ability because she did not meet at least three out of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Director also stated that the Petitioner does not qualify as an advanced degree professional in the RFE dated June 3, 2022. Because the record does not establish that the Petitioner merits a national interest waiver, we will reserve the issue for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. at 25.