U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29042024

Date: FEB. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3]

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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[4], 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

A. Advanced Degree

While the Director concluded that the Petitioner established eligibility for the underlying EB-2 classification as a member of the professions holding an advance degree, we disagree.

The record contains copies of the Petitioner's transcripts and bachelor's degree in nursing from the [redacted] in Brazil.[5] The record also contains a copy of the Petitioner's certificate in occupational nursing from the [redacted] in Brazil and an evaluation of education and work experience from a senior evaluator with GEO Credential Services, concluding that the combination of the Petitioner's foreign bachelor's degree and "5 years of qualifying experience" is equivalent to a U.S. master's degree in nursing. Here, the evaluator relied on the Petitioner's curriculum vitae, rather than letters from current or former employers as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the evaluation holds little probative value in this matter. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation.

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[3] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 USCIS Policy Manual, supra, at F.5(B)(2).

[4] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[5] We note that the transcripts do not confirm the Petitioner's completion of the final semester, as the transcripts only indicate the Petitioner's enrollment status for her final courses. The Petitioner should provide final transcripts in any future filing.

The Petitioner also submitted three employment letters confirming her employment in the following positions between 2014 and 2019: (1) Nurse with [redacted] from February 2014 through April 2014; (2) Nurse on Duty with [redacted] from November 17, 2014 to November 27, 2019; and (3) Nursing Manager with [redacted] from April 2016 to August 2019. However, none of the letters identified whether her employment was full-time or part-time. Although the Petitioner attested that she worked in two forty-hours-per-week positions from April 2016 to August 2019 (as Nurse on Duty with [redacted] and Nursing Manager with [redacted] on the Form ETA 750 Part B, Application for Alien Employment Certification, without more detailed information and corroboration from the Petitioner's employers, the record does not sufficiently show that she acquired five years of full-time, progressive experience in the field following the completion of her foreign bachelor's degree. Accordingly, the record does not establish the Petitioner qualifies as an advanced degree professional.

B. National Interest Waiver

The Petitioner plans to work in the United States as a nurse to provide specialized care with a specific focus on hyperbaric oxygen therapy, nursing management, intensive care unit (ICU) nursing, and occupational nursing. The record contains a professional plan from the Petitioner detailing her expertise in the field of nursing, including her knowledge of the "most modern strategies and techniques of nursing" that she will use "to stimulate exponential growth to organizations located in the United States." Given the Petitioner's experience within these specialties, the Petitioner asserts that she will "fulfill the gap of Nursing professionals in several healthcare organizations located in the United States [and] enable both hospitals and private entities to improve their patient care processes . . ." The Petitioner also contends that, through her nursing positions in the U.S., she will "optimize patient care solutions, reduce costs, increase productivity, enhance the flow of patients and treatments . . . [and] contribute toward the advance and optimization of the U.S. health care industry. . ." In the initial filing, and in response to the Director's request for evidence (RFE), the Petitioner also submitted multiple reference letters from former colleagues and doctors attesting to her ability to work in these nursing areas, while also positively impacting her employers' training and the standardization of processes, which the Petitioner would rely upon in order to further her proposed endeavor. [6]

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 Director concluded that the Petitioner did not establish that her endeavor will "create a significant economic impact, or broadly enhance societal welfare," and therefore the proposed endeavor did not have substantial merit. We disagree and withdraw the Director's determination to the contrary. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar* at 889. The Petitioner provided sufficient evidence of the

[6] While we may not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

characterization of her proposed endeavor in nursing, which falls within the range of areas (health) we concluded could demonstrate endeavors of substantial merit. So, the record supports the substantial merit of the Petitioner's proposed endeavor.

However, we agree with the Director that the record does not establish the Petitioner's proposed endeavor is of national importance. We note that the record contains reference to several industry reports detailing the critical importance of the nursing field in supporting the U.S. healthcare industry, the growing gap between the demand for nurses and the availability of qualified nurses in the U.S.—including within the hyperbaric oxygen therapy field—as well evidence of U.S. congressional interest aimed at both bolstering nursing education in the U.S. and addressing an increasing nursing shortage. While we acknowledge that the nursing field is of great national importance, 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 record contains letters of support from the Petitioner's past colleagues, including specialized doctors attesting to her expertise in the fields of hyperbaric oxygen therapy and nurse management. In particular, one former colleague who worked with the Petitioner commended her "significant impac[t] on the results of the hospital where she worked," which included improving services, organizing training, and issuing advice on standardization processes for the hospital. The record also contains two expert opinion letters evaluating the Petitioner's prior experience, and discussing the significant shortage for nurses in the United States—exasperated by the COVID-19 pandemic—and the growing gap between the demand for nurses and availability of qualified nurses in the U.S.

While the letters of support and expert opinions attest to the Petitioner's immediate impact to her former employers and patients, including her role in training and developing nursing protocols as a nurse manager with [redacted] and her mastery of "the most extensive nursing techniques," they do not detail how the Petitioner's experience would impact the nursing field beyond her immediate patients, co-workers, and employers. Moreover, the record does not establish that the Petitioner developed any of the trainings she organized and provided to her colleagues, nor is there any indication that this training was provided to additional nurses other than those employed with her employer. While it is true that *Dhanasar*'s analytical framework "seek[s] to avoid overemphasis on the geographic breadth of an endeavor," a petitioner should still establish the "broader implications" attributable to their proposed endeavor. *Dhanasar* at 884-885.

Moreover, the Petitioner's reliance on her experience and prior career accomplishments in Brazil do not establish the national importance of her proposed endeavor. A petitioner's expertise and record of success in previous positions 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 the national importance of the proposed work.

The Petitioner's reliance on the nursing shortage to establish the national importance of her proposed endeavor is also misplaced. The national interest waiver is not intended to address labor shortages. As the Petitioner has identified in the record, the Department of Labor's (DOL) Schedule A designation of nurses under its regulation at 20 C.F.R. § 656.16 allows U.S. employers to petition for noncitizen workers without first following the regulatory steps to test the labor market prior to filing

a permanent labor certification. *See* 20 C.F.R. § 656.17. Filing a permanent labor certification under Schedule A requires a job offer from a U.S. employer, as the recognized benefit is to that of the employer, not necessarily to a broader U.S. interest. As such, the availability of Schedule A to the nursing profession does not establish a nursing endeavor is of national importance. In addition, we note that although the expert opinion letters also address the growing nursing shortage, they do not explain how the Petitioner's endeavor will ameliorate this shortage.

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. Here, we similarly conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her employer(s), co-workers, and patients to impact the industry more broadly at a level commensurate with national importance. Nor has she shown that the particular work she proposes to undertake offers original innovations that contribute to advancements in nursing or healthcare or otherwise has broader implications for nursing or healthcare. Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the reasons stated above, we agree with the Director's conclusion that the Petitioner has not established her proposed endeavor is of national importance.

III. CONCLUSION

As explained, we withdraw the Director's determination that the Petitioner has demonstrated that she is an advanced degree professional. Further, because the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for, or otherwise merits, 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 eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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). We also reserve a determination as to the Petitioner's eligibility for the underlying immigrant classification as an individual of exceptional ability. *Id.*

ORDER: The appeal is dismissed.