U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35646179

Date: JAN. 08, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions 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 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 pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. 8 C.F.R. § 204.5(K)(2). A U.S. 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. *Id*.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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,[1] 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.

Id.

II. ANALYSIS

The Director determined the Petitioner qualified for EB-2 immigrant classification as an advanced degree professional, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established eligibility for a national interest waiver under the *Dhanasar* framework and will dismiss the appeal.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The record reflects that the Petitioner is a nurse with experience working in the intensive care unit (ICU) and experience providing intensive care therapy for the neonatal, infant, and adult critical patient care. In her initial filing, the Petitioner generally asserted that she intended to use her skills and expertise to work in the health care industry in the United States. In support of her endeavor, she submitted an expert opinion letter and multiple articles, industry reports, and fact sheets discussing the nursing industry, the growing cost of healthcare in the United States, as well as the shortage of nurses and health care professionals in the United States. In addition, the Petitioner submitted letters of recommendation from former colleagues and a former patient attesting to her skills in the ICU, including her ability to provide exceptional patient care.

Subsequently, in response to the Director's request for evidence (RFE) requesting more information pertaining to her specific proposed endeavor, the Petitioner submitted a newly created five-year business plan for a home health care services company, indicating she intended to serve as the company's lead consultant. According to the Petitioner, her company will operate with a "deep commitment to enhancing the quality of life for senior citizens and postoperative patients through exceptional home care services." To ensure individualized care, she intended to conduct in-depth interviews with prospective clients to create a specific care plan tailored to their medical and personal needs. According to her business plan, the company plans to target its services to postoperative patients to include medication monitoring, collection of blood and other fluids, analyzing patients vital signs, wound dressing, and other necessary care. In addition, the company will also target individuals recovering from work-place injuries as well as patients battling illnesses, with a goal or improving

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

patient care, reducing hospital stays, hospital infections, and ensuring patient safety. The Petitioner also stated that she intends to provide training, lectures, and mentorship to other professionals in the field. In addition to the business plan, the Petitioner also resubmitted the expert opinion letter, along with newly issued letters of recommendation and additional industry articles discussing the nursing industry and future projections relating to the health care industry.[2]

After acknowledging the submission of the new evidence, including the business plan, the Director denied the petition, concluding that the Petitioner's proposed endeavor of operating a home healthcare services company was substantially meritorious, but the record did not establish its national importance under the first prong of the *Dhanasar* framework. Specifically, the Director determined that the record did not support the Petitioner's assertions that her endeavor would result in broader implications to the field or result in national or global implications at a level commensurate with national importance. And the Director determined that the record also did not establish that her company had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects as contemplated in *Dhanasar*. *See Dhanasar* at 890. Accordingly, the Director concluded that, because the Petitioner did not establish the national importance of her endeavor under the first prong of the *Dhanasar* framework, she was not eligible for the requested national interest waiver.

On appeal, the Petitioner claims that the Director erred by not making a determination as to whether she satisfied the second and third prongs of the *Dhanasar* framework. However, because the Director concluded that the Petitioner's endeavor did not meet the first prong of the *Dhanasar* framework, further analysis of her eligibility under the second and third prongs served no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (confirming that "agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

Additionally, in regard to the first prong of the *Dhanasar* framework, the Petitioner asserts that the Director applied a higher burden of proof in their evaluation of the evidence; however, the Petitioner does not explain *how* the Director applied a higher burden of proof beyond a general disagreement with the Director's conclusions. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's evaluation of the evidence, without identifying the specific aspects of the denial she considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for her appeal.[4] Nonetheless, for the reasons discussed below, we have reviewed the record in its entirety and conclude that she has not established the national importance of her endeavor.

The standard of proof in this proceeding is 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

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.
[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

1989). Upon de novo review of the record, we agree with Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor of operating a home health care business has national importance as contemplated under the *Dhanasar* framework.

In *Dhanasar*, we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" resulting from the proposed endeavor, noting 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, the Petitioner continues to rely on the importance of the home health care industry in establishing the national importance of her endeavor, asserting that "it is clear that home care services meet the national importance standard." She also contends that her endeavor is nationally important given the prospective benefits offered from the home health care industry including providing services to an aging population, offering a more cost-effective health care alternative, improving health outcomes for home patients, and increasing access to health care in rural and underserved areas. Yet, while the articles and reports the Petitioner cites in support of these assertions establish that home health care may result in these benefits, these benefits relate to the substantial merit and importance of the field rather than the broader implications of the Petitioner's specific endeavor. The reports and articles do not discuss the Petitioner's specific endeavor or explain how her endeavor will be of national importance or otherwise lead to broader implications within the field. As mentioned above, when determining whether a proposed endeavor has national importance, we focus on the Petitioner's "specific endeavor," not the importance of the field, industry, or profession. *Id.* at 889

Moreover, while the Petitioner claims that the federal policies, including Medicare and Medicaid prioritize home care as cost-effective solutions, she has not shown how her endeavor would meaningfully impact these policies. While the Petitioner's endeavor may align with these policies, this relates more to the substantial merit of her endeavor rather than its prospective impact. She has not shown, for example how any benefits she is able to provide her prospective clients would impact the field or these policies more broadly at a level commensurate with national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In the same way teaching activities proposed by the petitioner in *Dhanasar* were not shown to have a broader impact on the field of STEM education, the Petitioner's endeavor would not have broader implications in the field. *Dhanasar* at 893.

We also reviewed the expert opinion letter in the record and conclude it provides little additional probative value in establishing the national importance of the Petitioner's proposed endeavor. First, the letter does not discuss the Petitioner's specific proposed endeavor of operating her home health care company. In fact, a significant portion of the expert opinion letter is focused on the importance

of the home health care industry without discussing how the Petitioner's company may impact the industry. Instead, the expert states that their evaluation was based on "their evaluation of the Petitioner's CV, academic credentials, and reference letters." Importantly, however, a petitioner's expertise and record of success 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 her proposed endeavor.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *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). Here, much of the content of the expert opinion letter lacks relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

Furthermore, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects contemplated in *Dhanasar*. *Id.* at 890. On appeal, the Petitioner relies on her assertions that small businesses and entrepreneurs heavily impact the success of the U.S. economy; however, she does not explain how her *specific* endeavor will result in substantial economic effects. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her company and its operations would rise to the level of national importance contemplated in *Dhanasar*. According to the Petitioner's business plan, she intends to begin her company's operations in [redacted] Massachusetts, and subsequently expand operations to two more offices in New Jersey and Idaho by the fifth year of operations. However, the Petitioner has not explained how her company's operations will impact these areas of operation.

And the Petitioner's projected employment and revenue also do not establish that her company will result in substantial economic effects. According to her business plan, she intends to serve as the company's lead consultant, and plans to employ 4 additional employees during the first year of operation, expanding to a total of 19 employees by the fifth year of operation. The business plan indicates that these employees will include registered nurses, medical directors, operations managers, and nursing assistants, among other positions, accounting for an annual payroll expense of $910,650 by the company's fifth year of operation. The business plan also indicates that her company would result in total sales of more than $2,028,312 in that same time period. However, the business plan does not provide sufficient explanation for the basis of these employment projections, and, beyond providing an anticipated cost of services, the business plan also do not explain the basis for the financial projections. We agree with the Petitioner's assertion that she only needs to establish the "prospective" economic benefits of her endeavor; however, without an explanation of the basis for the projections, the Petitioner has not sufficiently supported these projections. And, even if the company's revenue and job creation projections were sufficiently explained and supported, they do not establish that her company would operate on a scale rising to the level of national importance contemplated in *Dhanasar*.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As 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 as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25; *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).

ORDER: The appeal is dismissed.