U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31673489

Date: JUL. 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a Dental Assistant, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner warranted a waiver of the labor certification requirements for an EB-2 professional with an advanced degree. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts eligibility and resubmits evidence previously in the record.

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 a national interest waiver, a petitioner must first show eligibility 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 found that the Petitioner qualified for the underlying EB-2 visa classification. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

In her letter to the Director, the Petitioner stated:

> My proposed effort is to open a company (Cooperative) in the field of Training and Training for Dental Assistants with the aim of assisting in the preparation of professionals to work in the market. Qualification and improvement courses for professionals in the area (foreign dentists and foreign dental assistants) will also be offered online and in-person, which can reach the entire American territory.

The Director determined that while the Petitioner's proposed endeavor had substantial merit, it lacked the scope and impact necessary to rise to the level of national importance as defined in *Dhanasar*. Additionally, the Director concluded that the Petitioner had not provided sufficient documentary evidence to establish that she is well placed to conduct the endeavor or that on balance, the proposed endeavor warranted a waiver of labor certification and job offer requirements.

Based on a de novo review, we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that their proposed endeavor had potential prospective impact rising to a level of national importance. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"). Below we provide individualized consideration to the Petitioner's appellate claims.

As the Director correctly concluded, the Petitioner did not adequately demonstrate with material, relevant, or probative evidence that their proposed endeavor was nationally important. On appeal, the

Petitioner provides a brief discussing the Director's decision and identifying areas in which she disagreed with the Director's conclusions regarding her endeavor, her position to enact the proposed endeavor, and the broader implications of her undertaking. She further submits evidence already in the record and analyzed in the Director's decision incorporated here by reference.

In her brief on appeal, the Petitioner requests that we reconsider the national importance of her proposed endeavor because her envisioned cooperative will "encourage good practices in the profession while building an increasingly better environment." The Petitioner goes on to "acknowledge the lack of evidence demonstrating" that her training programs are "not available or superior to those already existing in the United States." She emphasizes that the difference between her proposed cooperative and existing U.S. training programs is the "direct integration between training and employment opportunities." While the Petitioner makes the claim that her endeavor is unique in providing trainees with employment, she has not provided evidence to show that other training programs, colleges, or universities in the United States do not offer the same or similar services.

The Petitioner further states that the creation of a "direct employability channel" for those who complete her training program is of national importance because there is a shortage of qualified dental assistants. She states that her endeavor in training and placing new dental assistants will expand access to quality affordable healthcare, enhance the workforce through specialized training, encourage preventative health, contribute to the general well-being of the population, and contribute to the advancement of knowledge and practices in the field through research.

We acknowledge the Petitioner's arguments that qualified dental assistants are important for the nation's quality of life and societal well-being. However, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The Petitioner's assertion that her proposed endeavor will provide increased access to affordable healthcare is unsupported by the record. There is no evidence in the record that establishes that increasing the number of trained dental assistants in the specified region will have an impact on the cost of health care or increase the number of available dentists. Moreover, the Petitioner acknowledged that the training courses she offers are not dissimilar from those already in existence in the United States. While the Petitioner generally references participating in research to advance the dental industry, she does not identify a specific research project, the time and resources needed for the research project, or the national implications of the proposed research.

The Petitioner reiterates on appeal that her endeavor will have far reaching economic impacts that rise to the level of national importance. The Petitioner states that as a training and placement cooperative her business is an important catalyst for labor in the economically depressed area of [redacted] Florida. We acknowledge the Petitioner's claims on appeal that her payment of wages and commission of $1,148,860 over a five-year period would add to the overall economic health of the area in which she proposes to operate. However, she has not demonstrated that this amount represents an economic impact at the national or regional level through objective evidence.

In 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 specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889. The Petitioner's endeavor

is a training and job placement cooperative with specific attention to the training and placement of dental assistants. The benefit of the training offered appears limited to the students, the dental offices that employ them, and the patients who experience their care. As the Director observed, the Petitioner has not adequately demonstrated the reach of the Petitioner's endeavor outside of her clients. In *Dhanasar* we discussed how teaching, like professional training, would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. The Petitioner's endeavor suffers from the same infirmity. Here, the record does not sufficiently demonstrate any broader implications from the Petitioner's endeavor outside of her students and dental offices that employ them. Moreover, the Petitioner has admitted that the training courses provided by her proposed endeavor are readily available in the United States and have no broader pedagogical implications for the dental industry. While the Petitioner has shown her endeavor will have some economic impact specific to her clients, she has not demonstrated that the impact would have broader implications for the national economy. Accordingly, the Petitioner has not demonstrated that her proposed endeavor is of national importance as contemplated by *Dhanasar* and we will dismiss her appeal on that basis.

Because the Petitioner has not established her proposed endeavor has national importance, she is not eligible for a national interest waiver under the *Dhanasar* analytical framework. We reserve our opinion regarding whether the evidence of record satisfies the second and third *Dhanasar* 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).

ORDER: The appeal is dismissed.