U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108968

Date: JUL. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a veterinarian, seeks classification as a member of the professions holding an advanced degree or, in the alternative, an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding that the record did not establish 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 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. 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. 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 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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. 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,[3] 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 found that the Petitioner qualifies for classification as an immigrant classification as an individual of exceptional ability. We agree with the Director that the Petitioner has demonstrated categorical eligibility for classification as an employment based second preference permanent immigrant albeit on a different basis. The Petitioner earned a "Título de Médica Veterinária" from [redacted] in [redacted] Brazil in 2006. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that professional "Título de Médica Veterinária" educational credentials earned at accredited institutions of higher education in Brazil are the single source equivalent to a first professional degree in veterinary medicine in the United States. So the Petitioner's Brazilian "Título de Médica Veterinária" is a foreign equivalent degree to a U.S. bachelor's degree from an accredited U.S. institution of higher education. In addition, the Petitioner provides letters from her former employers, [redacted] and [redacted] indicating that she has at least five years of progressive post-baccalaureate experience in her specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

[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.

[3] *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 remaining issue to be determined is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework. While we do not discuss each piece of evidence, we have reviewed and considered each one.

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.

The Petitioner's proposed endeavor is opening a company that will provide mobile veterinary medical services, both routine and emergency care, for small animals. The Petitioner will serve as the general manager and head veterinarian. The company will offer a wide range of medical services, such as client consultations, animal treatment, emergency care, animal vaccination, medical exams, and sample collections. The company will serve [redacted] counties in Florida, targeting individuals who work long or odd hours, are homebound due to age, disability, or injury, have multiple pets, or have anxious pets not used to leaving their homes. The Petitioners contends that her company will provide accessible and affordable veterinary services, address the shortage of veterinarians, create jobs, and boost the local economy.

The Director concluded the record did not establish that the proposed endeavor has national importance. On appeal, the Petitioner submits a brief which generally reiterates the benefits of her profession and her qualifications and contends that she has established the national importance of her proposed endeavor.[4]

In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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.

Moreover, 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. In

[4] The record supports that the Petitioner's proposed endeavor, which aims to address the health and well-being of animals, has substantial merit. The Petitioner provided information that there is a demand for the profession of veterinarians in the United States. We conclude that the record shows the Petitioner's proposed endeavor has substantial merit.

Dhanasar, we determined 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. We recognize the overall value of the veterinary medicine industry and strengthening our nation's veterinary services. However, the evidence does not demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organization and clients she would serve, or that her proposed work would otherwise have broader implications for the veterinary medicine industry or initiatives. For example, she does not claim, and the record does not establish, that her plans to introduce novel methodologies or medical advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how she will contribute to research and development of our nation's veterinary medicine. Here, the record does not show through supporting documentation how her specific company that provides mobile veterinary services stands to sufficiently extend beyond her prospective clients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. Although the Petitioner contends that her business will generate revenue and create employment opportunities, this does not rise to the level of national importance.

The evidence and argument the Petitioner introduced into the record does not help her carry her burdens of production and persuasion. In support of her claim that she can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided her professional plan, her academic credentials, letters of recommendation, records of her achievements, and a business plan for her proposed company, [redacted] The Petitioner also submitted an expert opinion letter from Dr. [redacted] a licensed veterinarian.[5] The letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact. USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting a petition is not presumptive evidence of eligibility. *Id.* Much of the expert opinion letter's content lacks relevance when it comes to the evaluation of whether the Petitioner's work rises to the level of national importance. For example, the writer identifies a shortage of veterinarians and professionals who provide veterinary services but did not explain how the Petitioner's work would alleviate those shortages at a national level. In any event, labor shortages are better addressed by the labor certification process, which requires a petitioner to undertake a labor market test to evaluate whether there are sufficient able, willing, qualified and available U.S. workers for the job opportunity. The national interest waiver process is a discretionary waiver of the labor certification to address those endeavors performed by foreign nationals rising to a level of concern with implications to the national interest.

It is also unclear from the evidence in the record whether the work of a single veterinarian or one clinic providing veterinary services, irrespective of its success or failure, would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the prospective potential impact of the work of one professional or group of professionals in a veterinary clinic could have broader implications implicating the national interest.

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

The Petitioner tries to highlight the broader implications of their endeavor by linking it to the ubiquity of pet ownership across the United States as a whole. But, as we stated earlier, we do not view the broader implications of a proposed endeavor solely through a geographical lens. Whilst the health and welfare of pets and by extension their owners holds merit, the record does not sufficiently describe how the "ripple effects" of the accurate diagnosis of maladies in pets implicate the greater national interest. The provision of veterinary services directly benefits only those individuals with pets availing themselves of the Petitioner's services. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner rising to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals and their pets, like the Petitioner's proposed mobile veterinary clinic, would not rise to a level of national importance.

Further, 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. We reviewed the Petitioner's business plan. The business plan makes various projections that the company will purportedly achieve in five years, such as increasing the sales forecast from $466,650 in year one to $2,056,685 by year five and providing a total payroll of $1,401,500 by hiring 23 employees. However, the plan does not provide sufficient detail of the basis for these projections, or adequately explain how these sales and staffing targets will be realized. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the record does not indicate that the location of the business and its proposed operations is an economically depressed area. Without sufficient evidence regarding the 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. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the remaining *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, 526n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise eligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established her eligibility for a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.