U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31456136

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, 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 qualified for a national interest waiver in the exercise of discretion. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner asserts eligibility and argues that the Director used an incorrect standard of proof when reviewing the evidence related to the national importance of her proposed endeavor.

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.

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,[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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a citizen and national of Brazil currently residing in the United States, provided evidence of a bachelor's degree in Psychology from [redacted] and a bachelor's of Dentistry from [redacted] The Petitioner provided evidence from Morningside evaluations and consulting as well as the academic records that establish her degree in dentistry qualifies as the equivalent of a U.S. doctoral degree. The Petitioner has also provided evidence that she worked in a dental clinic from August 2011 to December 2017. She has not provided evidence of work history between 2017 and the present.

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. Therefore, the sole issue to be addressed is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. In denying the petition, the Director addressed all three prongs of the *Dhanasar* analytical framework and concluded that the Petitioner did not demonstrate that she meets any of the three prongs.

On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that she meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion. For the reasons discussed below, we agree with the Director's conclusion that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

The Petitioner requested a waiver of the job offer and labor certification requirements on the basis that she proposed to "contribute to people's dental health." In her personal statement to the Director, the Petitioner stated that after completing her immigration process and receiving a work permit she would continue to study English while she seeks to have her diploma from Brazil validated in the United States through either the "Advanced Education in General Dentistry Program" or a "General Practice Residency." She goes on to state:

> After being able to practice the profession, I intend to develop my experience gained in Brazil, which is preventative work; whether it is in a consulting room, giving knowledge through advertising or even in a private sphere of a company. I also envision the future possibility of developing community work with the aim of

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

disseminating knowledge of the forms of oral hygiene essential to avoid dental problems and the resulting expenses.

The Petitioner further stated:

> As a good dental professional, I will raise the level of dentistry in the country by improving the oral health care of American citizens and will generate consumption of products in this area. With clinical experience and laboratory knowledge, through the production of all auxiliary and containment devices of orthodontics, I believe I can meet a lot of the demand for dental care that American citizens need. If there is an opportunity, I would work for the government providing oral health care or also teach what I have learned during all these years through some educational institution.

The Petitioner also indicated that she had created [redacted] as an export company "with the objective of commercializing diverse products from the USA to Brazil and other countries in the world." She did not elaborate on the specific products to be exported or the economic implications of her export venture.

The Director determined that the Petitioner's proposed endeavor had substantial merit but lacked evidence that it would have the economic, cultural, scientific, or educational impact that would rise to the level of national importance as defined in the *Dhanasar* framework and issued a Request for Evidence (RFE) seeking additional documentation relating to the national importance of the proposed endeavor.

In response to the RFE, the Petitioner provided a brief from her attorney, a business plan, resume, additional industry reports regarding dentistry, news articles regarding dentistry, and support letters. In the business plan provided in response to the RFE, the Petitioner proposes to open three dental clinics under the name [redacted] The clinics would be open in three distinct economically depressed areas in Arizona, Mississippi, and Florida. The business plan envisions the creation of 56 jobs and revenue of $28.9 million over the course of five years. The Petitioner would be the sole owner of shares in the company and would require an initial investment of $1.3 million from personal savings over the course of the first five years.

The business plan identifies the Petitioner as "Owner-Chief Entrepreneur-CEO" and provides a description of her duties:

> Determine and formulate policies and provide overall direction of [redacted] within guidelines set up by a board of directors or similar governing body. Plan, direct, or coordinate operational activities at the highest level of management with subordinate entrepreneurs and staff managers. Review financial statements, sales or activity reports, or other performance data to measure productivity or goal achievement or to identify areas needing cost reduction or program improvement. Direct and coordinate activities of businesses or departments concerned with the production, pricing, sales, or distribution of products. Direct administrative activities directly related to making products or providing services. Prepare staff work

schedules and assign specific duties. Monitor suppliers to ensure that they efficiently and effectively provide needed goods or services within budgetary limits.

The Director determined that the Petitioner had not provided sufficient evidence to establish the national importance of her proposed work as a dental clinician, that she was well positioned to advance that endeavor, or that on balance it was in the best interest of the United States to waive the job offer and labor certification requirements for EB-2 classification.

B. Substantial Merit and National Importance

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. *Id.* at 889.

On appeal, the Petitioner argues that the Director applied an incorrect standard of proof and that she had met the requirements for a national interest waiver by the preponderance of the evidence. Specifically, the Petitioner asserts that the Director did not give due consideration to the Petitioner's resume, business plan, evidence of her work in the field, letters of recommendation, or the industry reports and articles that address the shortage of U.S. professionals in the field of dentistry. To the extent that the Petitioner argues the Director did not apply the correct standard of proof, we review the evidence provided in support of the petition de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. at 537 n.2. However, the burden of establishing eligibility for the requested benefit rests firmly with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Chawathe*, 25 I&N Dec. at 375-76.

As indicated, the Petitioner initially claimed that she intended to work in a dental clinic, with the government, or alternately with an educational institution to further the awareness of dental health in the United States. However, in response to the Director's RFE, the Petitioner asserted that she intended to open and operate three dental clinics in multiple states and act as an owner and CEO. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of operating as the owner and CEO of multiple dental clinics but will evaluate whether the Petitioner has satisfied her burden of proof in establishing that her initial proposed endeavor to work as a dental clinician rises to the level of national importance.

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." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner stresses the importance of the dentistry profession, oral health, and dental coverage on insurance to promote the overall health of the nation. She provides numerous articles containing industry analysis regarding dentistry to support her assertion that the dental industry is nationally important. However, the

Petitioner must demonstrate the national importance of her specific proposed endeavor of providing her particular services at dental clinics rather than the importance of dentists and the dental industry in the United States. In *Dhanasar*, we 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.* 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. 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.

The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of continuing her work as a dentist in a clinic, or teaching future medical professionals, rises to the level of national importance. 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, the record does not show through supporting documentation how the Petitioner's specific dental services stand to sufficiently extend beyond her prospective clinics or patients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

In addition, the Petitioner has not shown that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. The evidence submitted in support of the Petitioner's initial proposed endeavor did not include a financial analysis, staffing projection, or other evidence of economic impact. Absent evidence regarding the projected economic impact or job creation attributable to her future work, the record does not show that the impact to the U.S. regional or national economy resulting from her dental position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Finally, the Petitioner stresses her ability to leverage her degree and experience in psychology to develop new methods of putting her dental patients at ease during examinations. These assertions are supported by the letters of support the Petitioner provided to the Director. The Petitioner's experience and abilities in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong.

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.