U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31498473

Date: JUL. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a radiologist, 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's proposed endeavor was related to his advanced degree, and that he had not established the national importance of the endeavor. 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.

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:

- 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.

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 second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The Petitioner is a radiologist who intends to continue his career in this field by acting as the CEO of a radiology clinic. He notes that he will provide specialized radiological care to patients, including interventional radiological procedures in various areas such as oncology and obstetrics.

The Director found the Petitioner not qualified for underlying EB-2 classification; while the Petitioner holds an advanced degree with requisite professional experience, the Director found the Petitioner's proposed endeavor to be unrelated to the Petitioner's field of study. The Director also determined that the Petitioner had not met the *Dhanasar* requirements for a waiver of a job offer and labor certification

[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).

from a U.S. employer. Specifically, the Director concluded that the national importance of the endeavor had not been demonstrated under prong one, and that the Petitioner had not shown that a waiver of the job offer requirement would be beneficial as required by prong three. We disagree with the Director's finding of ineligibility for EB-2 classification and withdraw this determination. However, we agree that the Petitioner has not established the national importance of the endeavor, as required under the first prong of *Dhanasar*, and we will dismiss the appeal.

A. The Petitioner Has Established His Eligibility for EB-2 Classification

The Director incorrectly determined that the Petitioner's proposed endeavor was unrelated to the studies leading to his advanced degree. The specific title for the Petitioner's proposed position is CEO, and the Director was correct that CEOs are not required to have the medical training the Petitioner completed. However, a review of the work the Petitioner intends to undertake as CEO demonstrates the relation to his field of study; the company the Petitioner intends to manage would provide clinical radiological treatments including ultrasounds and other imaging scans.

B. The Petitioner Has Hot Demonstrated that His Endeavor Has National Importance

On appeal, the Petitioner argues he has satisfied prong one of the *Dhanasar* framework because the Director did not properly consider his research background, the implications his work would have in the medical field, or the positive economic effects that would accrue while also improving societal welfare. He contends that the Director failed to adequately consider some evidence on record such as articles and internet sources.

The Petitioner argues that his areas of specialization in radiology elevate his endeavor to the level of national importance. He highlights that his particular focus in interventional radiology positions him to provide early detection and intervention in complex areas such as obstetrics and gynecology. The Petitioner argues that, by providing advanced imaging examinations and minimally invasive interventional procedures, he will be contributing to the advancement of the field of radiology. He notes that his adoption of advanced intervention techniques improves the medical conditions of his patients and has a positive effect of reducing immediate healthcare costs. In addition, he argues that by improving the health of his patients, his proposed work broadly enhances societal welfare and nationwide health outcomes. He highlights the critical labor needs for the healthcare profession generally and radiology specifically. He also notes that cancer-fighting procedures are a vital part of public health and have been highlighted by the U.S. government as areas of critical need. Similarly, he contends that he should be considered a STEM degree holder who will train the next generation of STEM professionals, and notes that the endeavor, situated in an area of critical need, will have a potential prospective impact "achieving a similar level of national importance such as the one held by the field itself."

In support of these contentions, the Petitioner has submitted evidence including, but not limited to: a business plan; various technical dossiers; letters of recommendation from fellow physicians detailing his competency, commitment to patient care, and embracing of new technology; lists of prizes and achievements received; evidence of research paper publication; and information relating to the healthcare industry, to radiology specifically, and to the need for STEM professionals in the United States.

The Petitioner has not satisfied the first prong of the *Dhanasar* framework requiring a proposed endeavor to be of national importance. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. 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.*

The Petitioner maintains that he "plans to revolutionize medical diagnostics and interventional radiology," but does not provide concrete examples beyond his willingness to remain updated on advances in the field and implement them in his practice. Although the evidence reflects the Petitioner's intention to provide valuable services for his patients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. We appreciate that the Petitioner and the physicians who write in his support highlight his commitment to embracing new techniques and technologies and incorporating these into his practice. However, the record does not reflect that the Petitioner is developing techniques, technologies, or procedures that have the potential prospective impact of advancing the field of radiology.

Similarly, while Petitioner has submitted some evidence of past research endeavors, including patient case studies, he has not shown that he is involved in research that is likely to result in advancements or changes in the field of radiology.[2] While the Petitioner also reiterates his commitment to training other radiologists who may work in his clinic, the evidence does not show that he intends to create teaching or training advancements that would impact radiology practice; rather, he indicates that he is assiduous in keeping abreast of the advances made in the field. 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 find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his patient base to impact the healthcare of radiology fields at a level commensurate with national importance.

With respect to the economic impacts of the proposed endeavor, the evidence provided is insufficient to demonstrate that his medical practice would result in significant benefits to the regional or national economy that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Finally, while the healthcare field, health infrastructure, and STEM readiness are areas of focus for the current administration and for various stakeholders nationally, this alone is not sufficient to show the endeavor's national importance. The Petitioner's contention that his work as a part of these nationally important fields necessarily demonstrates his endeavor's importance is misplaced. Labor certification waivers are not granted to classes of occupations; national interest waivers are intrinsically tied to the prospective potential impact of the specific endeavor in question.

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[2] We appreciate that the Petitioner has been involved in some research initiatives in the past; however, his business plan and other evidence does not indicate that a significant portion of his work with [redacted] would be dedicated to furthering research. Rather, the endeavor proposes to focus on direct patient care. We also take notice of the letters of recommendation indicating that the Petitioner is recognized for his willingness to adopt and implement technological advances. In particular, the record reflects his use of newly-available imaging techniques in Brazil that resulted in improved maternal mortality rates. However, the record does not reflect that the Petitioner was involved in the development of these techniques or that he otherwise stands to advance the practice of radiology in the United States.

See Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner proposes to act as a radiologist providing patient care. He highlights his experience in this area and his level of care and professionalism. While a caring and competent physician can certainly provide benefits to his particular patients, the proposed endeavor in this case is limited to the provision of clinical care for radiology patients. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of the proposed endeavor, as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. We reserve opinion on whether the Petitioner could satisfy the second and third prongs to qualify for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has established eligibility for EB-2 classification due to his possession of an advanced degree followed by five years of professional experience, and his intention to pursue an endeavor in a sufficiently related area. However, he has not established that his proposed endeavor rises to the level of national importance as required to receive a national interest waiver.

ORDER: The appeal is dismissed.