U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31655660

Date: JUL. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a radiologist, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest.

The Director denied the petition, concluding that whilst the Petitioner was well positioned to advance their proposed endeavor, the proposed endeavor was not of national importance such that on balance a waiver of the requirement of a job offer and labor certification would be beneficial to the United States. We agree with the Director's overall decision that the Petitioner does not qualify for a national interest waiver, but we do not agree with and will withdraw the Director's specific finding that the Petitioner was well positioned to advance their proposed endeavor.

A. Substantial Merit and National Importance

Whilst the Director found that the Petitioner's proposed endeavor had substantial merit, they also concluded that the Petitioner did not demonstrate that their proposed endeavor was of national importance because the Petitioner did not demonstrate the broader implications of the proposed endeavor or its potential positive economic effects. For the below reasons, we agree.

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 a 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. What is critical in determining the national importance under *Dhanasar* is whether the proposed endeavor has a potential prospective impact with broader implications which rise to the level of national importance. So, it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

As stated above, the Petitioner's proposed endeavor is to continue their career as a radiologist serving a Veterans Administration facility or federally designated healthcare professional shortage areas or medically underserved areas or populations by establishing a radiology consultancy and services company providing affordable radiological services.[1] The Petitioner roots their eligibility under this first prong of the *Dhanasar* framework citing their previous professional experiences, awards and recognitions as described in their personal statement, and curriculum vitae. The Petitioner also submitted several letters from various individuals describing the work that the Petitioner previously performed.

On appeal, the Petitioner states that the national importance of their proposed endeavor described in their "Business Plan" stems from their provision of medical imaging services in underserved areas at affordable prices. The Petitioner contends that national importance is broadly implicated by the need of their services by the U.S. public, especially those in underserved areas.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form

[1] The Petitioner's response to the Director's request for evidence (RFE) did not contain evidence, documentation, or assertion supporting eligibility for a national interest waiver for physicians pursuant to section 203(b)(2)(B)(ii) of the Immigration and Nationality Act as amended, 8 U.S.C. § 1153(b)(2)(B)(ii).

of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The infirmity of the Petitioner's proposed endeavor becomes readily apparent upon an examination of the evidence and argument the Petitioner introduced into the record. The Petitioner's evidence and argument does not help them carry their burden of production and persuasion because it does not relate to the national importance of the Petitioner's proposed endeavor under the first prong of the *Dhanasar* framework.

The Petitioner's appeal stresses that it is their execution of their proposed endeavor which elevates it to a level of national importance. But the Petitioner's argument spotlights a fundamental misunderstanding of the first prong of the *Dhanasar* framework. The first prong of the *Dhanasar* framework focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the likelihood of the success of the proposed endeavor. The Petitioner's contentions about their successful past performance in the endeavor they propose, as well as evidence and information of their achievements and recognition would better serve a demonstration of eligibility under the second prong of the *Dhanasar* framework.

The letters the Petitioner submitted did not reflect how national importance was implicated by the Petitioner's proposed endeavor because the letters focused on the Petitioner's past work. When evaluating the national importance of a proposed endeavor under the first prong of *Dhanasar*, we are concerned with its potential prospective or future impact. The Petitioner's demonstration of prior work in the field does not have an influence on the proposed endeavor's potential prospective impact based on its national importance.

The updated "Business Plan" is also insufficient to demonstrate the national importance of the potential prospective impact of the proposed endeavor. The "Business Plan" described the Petitioner's proposed endeavor as a plan to offer "a wide range of medical image scanning and analysis services" employing "the latest equipment and expert medical training." The "Business Plan" indicated the "target audience" or market for their proposed endeavor is "individual patients, as well as [the] physicians who make patient referrals to the" proposed endeavor. The practice of radiology in this manner, even when proscribed in the manner the Petitioner advances federally designated underserved areas, directly benefits only those individuals 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 wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit a small subset of individuals, like the Petitioner's proposed physical therapy endeavor, would not rise to a level of national importance. The Petitioner has not provided any material, probative, or relevant evidence of national or global implications to the field of radiology or broader implications separate and apart from the benefits that could be realized by the patients that may engage the Petitioner's services.

So, we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

B. Well Positioned to Advance the Proposed Endeavor

And we must withdraw the Director's conclusion that the record established that the petitioner was well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's education and licensure to practice medicine in their home country, and publication of scholarly articles. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor. For example, the Petitioner submitted several letters into the record that speak effusively of the Petitioner's prosecution of job duties or other professional services. But the letters do not sufficiently establish how the Petitioner prosecution of job duties or other professional services, whilst appreciated by the letter writers, is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Nor is it evident with material, relevant, or probative evidence how the Petitioner's participation at "congresses" as a speaker and presenter is a related or similar effort to their proposed endeavor to serve as a radiologist, a model or plan for their future activities, or indicative of progress towards achieving their proposed endeavor inside the United States. For example, it is not clear from the record how speaking and presentation opportunities in autoimmune conditions (lupus) and neurology (electromyneurography) relate to the field of radiology such that they would support how well positioned the Petitioner is to advance their proposed endeavor as a radiologist. The Petitioner asserts that they are registered as an "expert" in the "Single Court of [redacted] and in the "3rd Circuit Court of [redacted] But it is not adequately established in the record what specific field the courts have registered the Petitioner's expertise in. Moreover, the Petitioner's and other unrelated third parties' personal assets and prior earnings do not persuasively demonstrate interest or support in the proposed endeavor because it is not apparent how "believing in the success of [the Petitioner's] business" would support the level of investment required to advance the Petitioner's proposed endeavor. So, the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

C. Whether on Balance a Waiver is Beneficial

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. On appeal, the Petitioner asserts that the national interest in their proposed endeavor is sufficiently urgent to warrant a waiver, and that the United States would benefit from their contributions to the field of endeavor. As the Petitioner has not established that they meet the first or second prong of the *Dhanasar* framework, they have not shown that they are eligible for and otherwise merit a national interest waiver, and we reserve this issue. *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).

III. CONCLUSION

As the Petitioner has not met the requisite prongs of the *Dhanasar* analytical framework, we find that they have not established that they are eligible for or otherwise merit a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.