U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31570375

Date: JUL. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nutritionist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual with exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding 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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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. Section 203(b)(2)(B)(i) of the Act. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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 a degree of expertise significantly above that ordinarily encountered in the field.

Once eligibility for the EB-2 visa classification is established, a petitioner 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,[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.

II. ANALYSIS

The Director determined that the Petitioner is a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that she has more than 10 years of experience as a nutritionist, with extensive experience in school meals and clinical care focused on weight loss and metabolic disorders, as well as pre- and post-operative bariatric surgery. She states that her proposed endeavor is to continue her work as a nutritionist in clinical care and in school and hospital meal preparation. She states that, through her proposed endeavor, she will meet demand and alleviate a shortage of healthcare professionals, provide services to healthcare practices, provide lectures to professionals in the field, participate and lead research projects, and improve the overall health of U.S. citizens.

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[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 also 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).

[4] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. master's degree awarded in 2016. *See* 8 C.F.R. § 204.5(k)(3)(i). The Director concluded that, because the Petitioner established eligibility for the EB-2 classification as a member of the professions holding an advanced degree, it was not necessary to evaluate her eligibility as an individual with exceptional ability.

With the initial filing the Petitioner submitted evidence of her education and experience, a resume, a professional plan describing her proposed endeavor and claimed eligibility for a national interest waiver, an expert opinion letter, and recommendation and support letters. She also submitted industry reports and articles discussing the importance of school nutrition and healthy eating in the United States.

Following initial review, the Director determined that the Petitioner had not described her proposed endeavor with enough specificity to establish that she met any of the factors under *Matter of Dhanasar*, 26 I&N Dec. 884. The Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver under all three *Dhanasar* prongs. The Petitioner's response to the RFE includes an updated resume and professional plan (dated March 2023), a second expert opinion letter, an additional recommendation letter, and certificates of completion for various courses in nutrition and healthcare.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not submitted sufficient evidence to demonstrate that her proposed endeavor has both substantial merit and national importance, that she is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Director stated that the record did not include sufficient details about the Petitioner's proposed endeavor or its broad prospective impact. The Director noted that the Petitioner did not identify details such as the area where she intends to work or whether she intends to seek a position with an employer or serve as an independent consultant. The Director also concluded that, although the record demonstrates that the Petitioner is qualified to work as a nutritionist, she did not provide specific information about her proposed endeavor to establish that she is well-positioned to advance it. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of her prospective contributions to the United States, the potential creation of jobs, or that her self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director erred in concluding that her professional plans did not provide sufficient detail about her proposed endeavor. In her brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that she merits a national interest waiver.

A. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner's proposed endeavor is in nutrition and healthcare. We withdraw the Director's determination that the Petitioner's proposed endeavor does not have substantial merit but conclude that her proposed endeavor does not have national importance.

The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Id.* 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.* 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.

The Petitioner submits her professional plan in attempting to support the national importance of her proposed endeavor. On appeal, the Petitioner asserts that the plan presents "an unambiguous understanding of her intended activities as a Nutritionist [providing] nutrition services tailored to public management of school food service, hospital food service management, and clinical nutrition with a focus on weight loss and chronic diseases."

The Petitioner's professional plan provides general information about her proposed activities, including:

- Managing highly effective school food services.
- Serving balanced and quality meals to hospital staff and patients.
- Preparing dietary prescriptions and nutritional guidance to patients before and after obesity surgery.
- Advancing her research on malnutrition in healthcare institutions.

The plan provides general predictions that the business will "enhance societal welfare and the national economy." However, the Petitioner's professional plan provides generalized projections that are not specific and detailed enough to establish the potential prospective impact of her proposed endeavor.

The Petitioner states that she will provide "school nutrition consultancy" and will "provide lucrative nutrition strategies for U.S.-based companies and support to public agencies." However, the plan does not provide detail about how she intends offer her services. The Petitioner does not identify specific stakeholders with whom she would collaborate or identify specific events in which she would participate to reach clients. Nor does she identify the public agencies she plans to support.

In her work in hospital nutrition, the Petitioner states that she "will lead a multi-professional team that includes cooks and their assistants, butchers, stockists, cleaners, butlers, and nutrition technicians." She further states that she will manage human resources, including responsibility for "employee uniforms, attendance control, days off, vacations, and interpersonal issues in the work environment." However, the Petitioner's professional plan does not include a discussion of how she intends to employ and support these workers, including an analysis of wages and benefits.

The Petitioner's proposed endeavor also includes scientific research. She states that her proposed endeavor "will address the problems identified in the current state of the research." However, the Petitioner does not describe her intended research or the problems she intends to address. Nor does

she discuss where and how her research will be conducted, or how her research will be important to the field of nutrition.

The Petitioner asserts that her proposed endeavor will "achieve better productivity and profitability levels, generate revenues within the country and enhance job creation." However, this statement is not supported by independent, objective evidence. The Petitioner's projection of creating jobs is generalized and the record does not demonstrate a significant potential to employ U.S. workers or support that her proposed endeavor will have substantial positive economic effects. On appeal, the Petitioner states, "The economic impact of [the] proposed endeavor is evident in the growth projection of the global nutrition consulting services market." However, as noted above, the Petitioner's professional plan does not provide sufficient detail to analyze its potential prospective impact.

Although the Petitioner asserts that her proposed endeavor is "different from the work of ordinary Nutritionists," she does not explain with sufficient detail how it is different. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will have broader implications within the field of nutrition, as contemplated by *Dhanasar*. *See Matter of Dhanasar,* 26 I&N Dec. at 889-90. The record does not establish that her proposed endeavor stands to impact the field as a whole.

The Petitioner submits articles and industry reports discussing the demand for healthcare professionals and the overall importance of healthy nutrition in the United States. Although the reports tend to support that healthcare and nutrition are national initiatives, the reports do not specifically discuss the Petitioner's proposed endeavor. "In determining national importance, the officer's analysis should *focus on what the beneficiary will be doing* rather than the specific occupational classification." 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual (emphasis added). Additionally, occupational deficiencies are directly addressed by the U.S. Department of Labor through the labor certification process and are not a basis for national importance under the first prong of the *Dhanasar* framework.

When 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 "the specific endeavor that the foreign national proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. Although we agree that healthy nutrition is important and may be the subject of national initiatives, we conclude that this does not necessarily establish the national importance of the Petitioner's specific proposed endeavor. The record contains insufficient information or evidence regarding the Petitioner's proposed endeavor to show broad potential implications demonstrating national importance.

The Petitioner also submits recommendation letters from former colleagues, professors and patients. We note that the letters describe the Petitioner's duties as a student and professional, rather than describing achievements that had broad implications to the field of nutrition or identifying skills that differ from or improve upon those already available and in use in the United States. While some of the letters describe the Petitioner's past accomplishments in her work in Brazil, the authors do not explain how these accomplishments translate to a prospective impact on nutrition in the United States. The letters praise her qualifications and professionalism, but the Petitioner's skills, expertise, and abilities 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 she proposes to undertake has national importance under *Dhanasar's* first prong.

To support the claimed national importance of her proposed endeavor, the Petitioner references two expert opinions. The record includes an opinion prepared by Dr. [redacted] of [redacted] and an opinion prepared by Dr. [redacted] of [redacted] We acknowledge that the expert opinions include analyses of the national importance of the Petitioner's proposed endeavor.

In her analysis Dr. [redacted] discusses the Petitioner's academic and professional background. In discussing the Petitioner's proposed endeavor, Dr. [redacted] states:

> She will provide indispensable guidance at all nutrition fields, and she will continue to further her knowledge to better serve the United States. She intends to apply all the knowledge she has acquired to help the American population achieve its expected results, from weight loss to health and well-being, as well as to the prevention and control of chronic diseases that affect people every day.

While this description lists the general job duties and responsibilities of a nutritionist, Dr. [redacted] does not discuss any specific details of the Petitioner's proposed endeavor. Dr. [redacted] does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the broad implications on nutrition, the potential to employ U.S. workers, or the positive economic effects. Rather, her opinion is general in nature, concluding that, because the Petitioner's proposed endeavor is to be a nutritionist, it has national importance.

Similarly, in his analysis, Dr. [redacted] opines that in performing the duties of a nutritionist, the Petitioner will "improve the health of U.S. students, patients and citizens at educational institutes, healthcare organizations and private companies by applying her nutritional knowledge and experience." However, he also does not discuss any specific details of the Petitioner's proposed endeavor or explain how it will have a prospective impact on the United States.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinions are of little probative value as they do not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance.

On appeal, the Petitioner relies upon the evidence she previously submitted and asserts that the Director erred in concluding that it was insufficient and lacking detail. The Petitioner continues to rely upon the asserted demand for the services she will provide, her professional experience and achievements, and the importance of the field of nutrition generally. However, as set forth above, the evidence does not sufficiently demonstrate the Petitioner's proposed endeavor's national importance.

Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[5] *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[5] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that the Petitioner did not establish its national importance, that she was well-positioned to advance the proposed endeavor, or 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 references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that she meets all of the three *Dhanasar* prongs.