U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283043

Date: JUL. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as an individual of 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 Texas Service Center denied the petition, concluding that although the Petitioner established she is an advanced degree professional, the evidence was insufficient to establish that a waiver of the required job offer and the labor certification, would be in the national interest.[1] 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. Section 203(b)(2)(B)(i) 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.[2] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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[1] We agree with the Director's determination that the Petitioner is an advanced degree professional based on a combination of her bachelor's degree and more than five years of progressively responsible work experience as a nurse. In addition, she submitted a credentials evaluation prepared by GEO Credential Services, which determined she has the U.S. equivalent of a master's degree in nursing. As such, the record contains a preponderance of evidence to establish she is an advanced degree professional within the meaning of section 203(b)(2) of the Act.

[2] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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. at 889.

II. ANALYSIS

The Petitioner filed this petition on November 28, 2022. After analyzing the initial evidence, the Director issued a request for additional evidence (RFE) on March 28, 2023, and a second RFE on July 7, 2023. The Petitioner timely responded to both RFEs. The Director denied the petition concluding the Petitioner did not establish that her proposed endeavor is of national importance under prong one or that on balance, it would be benefit the United States to waive the job offer requirement under prong three.

As an initial matter, we note that the Petitioner asserts she was denied due process rights and fair treatment. To support her contention, she cites to the Director's statement that because she did not meet either prongs one or three of the *Dhanasar* national interest framework, she is not eligible for, and does not merit a national interest waiver as a matter of discretion. She also claims the Director stated there was "no meaningful purpose" in analyzing the "NIW prongs." The Petitioner's contention lacks merit. In their prong one analysis, the Director provided a summary of the evidence submitted, and citing to relevant caselaw, determined that the evidence did not sufficiently address the prospective impact the Petitioner's proposed endeavor would have on the field of nursing or healthcare, at a level commensurate with national importance. Still, analyzing the same evidence, the Director determined that the evidence established the substantial merit of her endeavor. Moreover, the Director issued two RFEs explaining the deficiencies and concerns in the Petitioner's evidence relating to *Dhanasar*'s three prongs and provided a non-exhaustive list of documentation and material that the Petitioner could submit to address such deficiencies.[4] *See* 8 C.F.R. § 103.3(a)(1)(i) (stating "[a]n officer shall explain

[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).

[4] Although we agree with the Director's overall conclusion that the Petitioner has not established the national importance of her proposed endeavor, the Director's statement found in their July 7, 2023 request for additional evidence (RFE) that "continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under this analytical framework" constitutes legal error. *See Love Korean Church v. Chertoff*, 549 F.3d 749, 753–54 (9th Cir. 2008) (standing for the proposition that imposing a novel evidentiary requirement is an abuse of discretion). Thus, we withdraw that portion of the Director's RFE analysis. However, because the Petitioner has not otherwise met her burden of establishing, by a preponderance of the evidence in the record, that her endeavor is of national importance, we decline to remand the

in writing the specific reasons for denial" to allow a petitioner a fair opportunity to contest the decision and allow us an opportunity for meaningful appellate review). As the Director's RFEs and decision conform to this regulatory requirement, the Petitioner has not persuasively explained how she was denied due process and fair treatment. *See* 8 C.F.R. § 103.2(b)(8) (explaining that USCIS may either deny a petition or request more information or evidence if the initial evidence submitted does not establish eligibility).

Next, the Petitioner alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to [her] detriment . . ." and that the Director ignored relevant evidence including the Petitioner's resume, business plan, work experience in the field, letters of recommendation, and industry reports and articles. As to her first allegation, we reiterate the standard of proof governing immigration benefit requests is "preponderance of evidence." *See Matter of Chawathe*, 25 I&N Dec. at 376 (standing for the proposition that determinations for immigration benefits are based on the quality and not the quantity of evidence alone and that in adjudicating pursuant to the preponderance of the evidence standard, a director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is "probably true"); *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition. As such, she has not persuasively explained the basis for her assertion that the Director held the Petitioner to a higher standard of proof.

As to her allegation that the Director ignored relevant evidence, we note that the record contains three versions of a business plan (the last of which materially changes the Petitioner's proposed endeavor), as well as several documents that relate to the Petitioner's work experience and reputation in her field.[5] The Director correctly analyzed that the Petitioner's work experience and qualifications to be a nurse in the United States is considered as part of our second prong analysis where we look to see if a petitioner has established, they are well-positioned to carry out their endeavor, and consider factors such as 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." *Dhanasar* at 890. Beyond that, the Director considered and explained the remaining evidence to conclude the Petitioner had not established the national importance of her endeavor as required under prong one of the

matter on this basis. Further, the Director did not include this misstatement of the law in their decision and thus appears to have self-corrected the error.

[5] In response to the Director's second RFE dated July 7, 2023, the Petitioner submitted a third business plan in which she describes for the first time that her endeavor is to develop a company called [redacted]. Her endeavor appears to have evolved since the filing of her petition, which constitutes a material change in the petition, requiring the filing of a new petition. *See Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm'r 1998); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (standing for the propositions that a petitioner must establish eligibility at the time of filing, and a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts). The Petitioner is advised, for purposes of any future filings, that a post-adjudication material change to a petition to make a deficient petition conform to USCIS requirements is not permitted. For purposes of our decision, we will consider the proposed endeavor she articulated with her initial petition and in response to the Director's first RFE, dated March 28, 2023.

Dhanasar framework. As such, the Petitioner's has not persuasively explained how the Director ignored relevant evidence to her detriment.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Id.* at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

In evaluating her proposed endeavor, we consider her personal statement dated May 2021, and her business plans dated July 2022 and June 2023,[6] which explain that her proposed endeavor is to work as a nurse in the United States and provide "high-quality nursing services to patients focusing on urgent and emergency care" as well as "educate and train other professionals in the field by sharing her healthcare methods and strategies developed and applied in Brazil." She describes the steps she will take to become an accredited nurse and explains that "[f]illing the market gap for qualified nurses [] is especially important due to COVID-19 pandemic." She also submits industry reports and articles covering various topics related to the field of nursing. As such, based on the totality of the relevant evidence, we agree with the Director that the Petitioner has established, by a preponderance of the evidence, that her proposed endeavor has substantial merit. Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

On appeal, the Petitioner submits a brief and asserts that the Director did not give "due regard" to her resume, business plans, her "work in the field, which demonstrates her vast contributions in her field," letters of recommendation; and industry reports and articles "demonstrating the national importance of [her] proposed endeavor [and] the steep shortage in the U.S. of professionals with her profile in the field." She maintains that her endeavor is of national importance because "[s]he is set to help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy."[7] She contends her endeavor aligns with national security concerns relating to

[6] While we may not mention each and every document, we have reviewed each one.

[7] The Petitioner's brief includes the following: "Overall, the Appellant's direct knowledge of business, finance, and logistics will benefit any U.S. companies and business that needs qualified professionals who possess expertise in customer relationship management, international relations, branding, project management, and business management. Her knowledge and connections have assured her success in the steady and strong company operations flow, which she plans to continue to infuse in the U.S." This information appears to be related to another individual because it does not relate to the Petitioner or her proposed endeavor to work as a nurse. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988)

protecting the American people and our way of life, promoting prosperity, preserving peace through strength and advancing American influence.

The Petitioner asserts that her endeavor is of national importance because it will promote proper treatment techniques by training nurses, as well as the fact that nurses, who are in short supply, are important to hospitals, clinics, and private practices. The Petitioner cites to various reputable sources reflecting on the shortage of nurses, such as industry publications from the American Nurse Association, discussing the dire need for nurse professionals in the United States. For example, the American Hospital Association's report explains that after studying the nursing shortage, the root causes are lack of investment in nursing schools, nurse faculty salaries and training time, the need for more federal protections for healthcare workers against violence and intimidation, the need for more apprenticeship programs for nurse assistants, the need for increased funding for the National Health Service Corp and the National Nurse Corp, as well as support for expeditious visas for foreign-trained nurses. While these sources support the Petitioner's burden of establishing her endeavor is of substantial merit, they do not establish its national importance. In order for these reports and publications to establish her proposed endeavor's national importance, they should specifically discuss her endeavor and its impacts on the field of nursing or healthcare. Alternatively, if her endeavor addressed or tried to solve any of the identified causes for the nursing shortage, this evidence would also be relevant to our analysis of its national importance because it would provide a context for understanding her endeavor's impact. However, here, none of the sources discuss her endeavor to work as a nurse, nor does her endeavor include solving or addressing the root causes of the nurse shortage in the United States. As such, this evidence does not establish how the Petitioner's endeavor will have a broader prospective impact on the field of nursing at a level commensurate with national importance as contemplated by *Dhanasar*. *Id.* at 889.

A professor at the [redacted] provides an advisory opinion on the national importance of the Petitioner's endeavor. The evaluator opines that it is of national importance based on the Petitioner's "impressive record of achievements as a Nurse in Brazil." He also explains that "[n]ursing jobs are growing, and it is projected that more nurses will be needed in the coming years." The opinion cites statistics about the healthcare industry and the retirement of baby boomers and how that is going to change the need for nurses. He then explains how the Petitioner's experience in Brazil's healthcare sector would make her an asset to this field, because she would use her "intimate knowledge of the healthcare field . . . [and] has significant potential to teach and train other U.S. professionals in the field [about] her healthcare methods and strategies . . .." While the opinion supports the substantial merit of the Petitioner's endeavor, it is insufficient to establish its national importance because it is based on the importance of the healthcare field and the Petitioner's experience in Brazil. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is questionable, we are not required to accept or may give less weight to that opinion); *see also Matter of Chawathe*, 25 I&N Dec. at 375-76. As stated above, the Petitioner's past professional endeavors are the focus of *Dhanasar's* second prong, when we examine whether she is well-positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890. Moreover, as explained in

(standing for the proposition that any inconsistencies in a petitioner's evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition).

Dhanasar, in determining whether the proposed endeavor has 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." *Dhanasar,* 26 I&N Dec. at 889. Here, the opinion does not focus on the impacts the Petitioner's nursing services will have on the national issues facing the field of nursing, such as the provision of healthcare services considering the shortage of nurses. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Similarly, reference letters provided by medical professionals in Brazil explain that she is a nurse with a positive employment record who is held in high regard by her professional network and former colleagues. For example, a medical doctor in Brazil explains how his prior work with her at a medical clinic showed her excellent skills in "dressings of the operative wounds and the care of the patient as a whole." A nurse in charge of coordinating the [redacted] facility explains that the Petitioner was in charge of making "work schedules, sizing teams and assigning tasks . . . [and] implements the Systemization of Nursing Assistance . . . [which] ensur[ed] . . . the provision of safe, humanized and individualized assistance. . ..," among other career highlights. While her work in these healthcare environments appears commendable, the letters are relevant to prong two of the *Dhanasar* framework but do not establish the broader implications of her endeavor in the U.S. healthcare system or on the field of nursing in the United States. *See Dhanasar*, 26 I&N Dec. at 890; *see also Matter of Chawathe*, 25 I&N Dec. at 375-76.

As stated above, the Petitioner relies on industry reports and articles concerning such topics as the importance of the nurses to the field of healthcare and patient satisfaction, issues around patient safety, quality care and nurse burnout, disease prevention, sepsis shock and early detection, the need for bilingual nurses, how the U.S. immigration system is responding to the shortage of nurses, as well as the negative impact the shortage of nurses is having on the industry, particularly in emergency room departments. However, to reiterate, while the articles provide a context for some of her assertions, they do not *specifically* discuss the Petitioner's proposed endeavor or explain how her endeavor would have broader implications. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In determining whether the proposed endeavor has 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." *Dhanasar,* 26 I&N Dec. at 889.

The Petitioner states that her endeavor has national importance due to the shortage of nurses in the United States and references fact sheets from the White House's initiatives to attract STEM talent for purposes of strengthening our economy and American competitiveness. She further contends that her endeavor aligns with the four national interests identified by the Biden Administration's Interim National Security Strategic Guidance. Though we acknowledge the Petitioner's skills and experience in the nursing field could have a positive impact on her future patients and employers, she has not provided sufficient evidence that her endeavor would solve the nurse shortage or that her endeavor would stand to provide substantial economic benefits in the United States. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Moreover, many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. In *Dhanasar*, we determined that a STEM teacher's proposed endeavor had substantial merit, but that the record did not establish his teaching activities would impact the field of education more broadly. *Id.* at 893. Similarly, here, the record does not suggest

that the Petitioner intends to advance STEM technologies and research in the field of nursing. Moreover, while the Petitioner's endeavor encompasses the training of nurses, the Petitioner has not established how her teaching would affect STEM employment levels in the nursing industry or the U.S. economy. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

As contemplated by *Dhanasar*, we examined the record to determine if there is sufficient evidence to conclude the Petitioner's "undertaking may have national importance . . . because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 893. Here, we find no evidence to support such a conclusion. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

We also explained in *Dhanasar* 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 . . . may well be understood to have national importance." *Id.* at 890. Here, the Petitioner has not submitted evidence to establish this and agree with the Director that the Petitioner has established her previous career success may have benefitted her employers and patients, but not the field of healthcare as a whole, at a level commensurate with national importance.[8]

Lastly, we note that the Department of Labor (DOL) has addressed the shortage of nurses by designating professional nursing as a "Schedule A" occupation. A "Schedule A" occupation is one codified at 20 C.F.R. § 656.5(a) for which the DOL has determined there are not sufficient U.S. workers who are able, willing, qualified and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of noncitizens in such occupations. This designation exempts U.S. employers of noncitizen nurses from having to test the labor market and obtain a certified ETA 9089 (Application for Permanent Employment Certification) from the DOL prior to filing the petition with USCIS. Instead, the petition is filed directly with USCIS with an uncertified ETA 9089 in duplicate. *See* 8 C.F.R. § 204.5(a)(2); *see also* 20 C.F.R. § 656.15. However, this is not a waiver of the job offer requirement, and as such it does not support a finding that nursing-related work inherently has national importance in the context of a national interest waiver petition.

B. *Dhanasar's* Second and Third Prongs

As the Petitioner has not established the national importance of her proposed endeavor, we decline to reach and hereby reserve her arguments regarding her eligibility under the third prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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). We note that the Director's decision did not contain any conclusion or analysis under *Dhanasar's* second prong. As such, we reserve review of the Petitioner's

[8] We acknowledge that the Petitioner's third business plan dated August 2023 explains that her endeavor is to be an entrepreneur and create a company that will employ up to 66 workers by its fifth year of operation. However, because her third business plan constitutes a material change in her proposed endeavor, as we explained above, we will not consider this information in our analysis of this petition. In order for this evidence to be considered, she must file a new petition. 8 C.F.R. § 103.2(b); *see also Matter of Izummi* and *Matter of Katigbak*, 14 I&N Dec. at 49.

second prong evidence based on these same principles. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.