U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31124992

Date: JULY 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business owner, 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 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. 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, they 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,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

A. EB-2 Classification

The Director found the Petitioner qualifies as a member of the professions holding an advanced degree. However, as the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

B. 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. 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.

The Petitioner proposes to create a medical digital platform, which will implement "innovative technology systems" for health service providers and patients with the goal of making the healthcare system more easily accessible for patients. The platform will include features allowing the identification of nearby physicians, telemedicine options, in-person appointments for the performance of clinical tests, and patient feedback. The Petitioner states the software will provide transparency for both healthcare providers and patients, allowing them to see upfront costs for services and scanned insurance cards, as well as improve communication between the parties, allowing patients to confirm or cancel appointments. The platform will also include the patient's medical history and the physician's data, such as attendance rates and the number of patients served. Through her endeavor, the Petitioner states she will create better quality public care services and contribute to the U.S. economy, healthcare system, and overall quality of life.

Based on the evidence presented, the Director concluded that the Petitioner's endeavor has substantial merit but not national importance under *Dhanasar's* first prong.[3] On appeal, the Petitioner asserts that the Director's analysis of *Dhanasar's* first prong overall "contains instances of a misunderstanding and misapplication of law that go beyond harmless error and reach the levels of abuse of discretion."[4] We find the Petitioner's claims unpersuasive and agree with the Director's ultimate conclusion, as discussed below.[5]

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[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

[3] The Director also concluded that the Petitioner did not meet *Dhanasar's* second or third prongs.

[4] The Petitioner's counsel attached a copy of the Director's decision to this appeal, but it does not relate to the Petitioner in this case.

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner first contends that the Director ignored "objective, documentary evidence," such as various articles and government reports submitted with the initial filing and the Petitioner's response to the request for evidence (RFE). With this evidence, the Petitioner claims she showed the national importance of her endeavor with documentation speaking to the inherent benefits of enhancing patient outcomes, reducing healthcare costs, and expanding access to quality healthcare services, particularly for disadvantaged communities. The Petitioner also contends that her initial filing and RFE response contained ample evidence that "clearly and unambiguously" spoke to her proposed endeavor's national importance and its prospective national impact from an economic and social welfare standpoint. She emphasizes that the articles "demonstrate an interest from the United States in harnessing the Petitioner's knowledge and expertise" and that her endeavor is "closely tied to the government's interest."

In determining national importance, however, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead the focus is on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The articles and reports cited in the appeal provide only general background information on the healthcare industry and do not specifically relate to or discuss the Petitioner's proposed endeavor, including how it might impact these fields more broadly, such that it rises to the level of national importance. Merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

The Petitioner's claim that the Director abused her discretion in failing to "correctly and rightfully consider the viable, probative evidence" per *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) is also unavailing. The court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does it suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Att'y. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

Here, the Director's statements, for example, that "there is no documentary evidence that supports the claim that the endeavor will impact the industry" or that "the record is not supported by independent and objective evidence demonstrating that the [P]etitioner's work has potential implications that are of national importance," indicates that the quality of the evidence overall lacked probative value in supporting the national importance of the endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 376 (providing that "the 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). These statements alone do not show, as the Petitioner claims, that the Director ignored the evidence.

Furthermore, the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually. The Director recognized the evidence submitted by the Petitioner in response to the RFE, including the Petitioner's business plan, updated cover letter and personal statement, and articles and reports indicating telehealth care is an important

industry. Based on the evidence of record though, the Director concluded, and we agree, that the evidence does not sufficiently demonstrate the endeavor's potential prospective impact to establish its national importance.

For instance, the Petitioner makes several claims of economic benefits, however, they are too attenuated to sufficiently show the endeavor's "substantial positive economic effects." In her proposed endeavor statements, the Petitioner claims her endeavor will save the U.S. healthcare industry "billions of dollars each year by reducing manual processes through a secure, multi-payer platform, getting better patient outcomes, prompt emergency care, comprehensive management of chronic illnesses, making informed, data-driven decisions regarding treatment, improving healthcare access to disadvantaged communities through telehealth and health campaigns." The Petitioner also states her plan is "to initially help more than 21 million people in the state of Florida." Despite her claims, however, the Petitioner has provided little evidence to support these numbers. She has not explained how these projections were calculated or provided sufficient evidence showing their bases. We note that any basic business activity has the potential to positively impact its clients and community and, in turn, the economy and societal welfare; however, the Petitioner has not offered a sufficiently direct connection between her proposed endeavor and any demonstrable economic or societal welfare effects to establish her endeavor's national importance.

Similarly, the Petitioner claims her platform will implement "innovative technology systems" and address "critical gaps in the U.S. healthcare system." However, she has not adequately explained, for example, what her "innovative technology" is or how it differs from, or is better than, software already available and in use in the United States. While the Petitioner's healthcare related software may be beneficial to her potential clients and users of the platform, the record does not adequately demonstrate that the endeavor has the potential to result in a broad impact to the healthcare industry such that would rise to the level of national importance.

The Petitioner also stresses that her endeavor "to optimize advancements in technology for the U.S. healthcare system" aligns with broader national priorities for healthcare reform. She cites articles on subjects including the need to modernize the U.S. healthcare system to improve quality while reducing costs, the need for innovation and competition in healthcare, as well as the Biden-Harris Administration's investment to expand telehealth nationwide, improve healthcare in rural and other underserved communities, and develop a global health workforce plan. She also asserts that the Director's decision "presents contradictory assessments" of the evidence. Specifically, the Petitioner notes that the RFE indicates that evidence to establish national importance may include documents demonstrating that the endeavor "impacts a matter that a government entity has described as having national importance or is [the] subject of national initiatives." She also asserts that the Director "acknowledged that the Petitioner provided numerous government initiatives and regulations that illustrate the impact of the endeavor on a matter considered nationally important." The Petitioner contends, therefore, that this evidence "must account" for demonstrating national importance and that it is "contradictory and arbitrary" to conclude otherwise.

We find this argument unpersuasive. While documents showing the endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives may indicate that an endeavor has national importance, merely showing that a petitioner plans to work in that industry is not sufficient, in and of itself, to establish the national importance of the proposed

endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 (stating that the first prong's focus is on "the specific endeavor that the foreign national proposes to undertake"). The petitioner must still demonstrate the proposed endeavor's potential prospective impact in that area of national importance.

Here, the Director acknowledged the Petitioner submitted articles and reports indicating telehealth care is an important industry. However, the Director properly concluded that the Petitioner did not adequately demonstrate how any impact resulting from her medical digital platform would have broader implications in the healthcare industry, such that it would rise to the level of national importance. The articles and reports do not discuss the Petitioner's specific endeavor, do not discuss the government's interest in the use of the Petitioner's digital platform, and overall do not help demonstrate the potential prospective impact of the endeavor on the healthcare industry. As the Director found, while the Petitioner's medical digital platform may be beneficial to her potential clients and their users, the record does not sufficiently demonstrate that the endeavor has the potential to result in a broader impact to the healthcare industry to show the national importance of the endeavor.

We note that the Petitioner relies largely on articles and reports that do not discuss her specific endeavor to support her eligibility under *Dhanasar's* first prong. However, general conclusory statements without a sufficiently direct evidentiary tie between the proposed endeavor and the claimed economic or other impacts are insufficient. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Id.* at 375. Because the Petitioner has not established through sufficient evidence in the record that her proposed endeavor meets the first prong of the *Dhanasar* framework, she has not demonstrated eligibility for a national interest waiver. Since the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining issues concerning whether she has established eligibility for the EB-2 classification, as well as eligibility under the remaining two *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We, therefore, conclude that the Petitioner has not established that she is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.