U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31720775

Date: JUL. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, 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 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, but she did not establish that her proposed endeavor has national importance as required to establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we conclude that the Petitioner has not met the first prong of the *Dhanasar* framework and will dismiss the appeal accordingly.[2]

On appeal, the Petitioner alleges that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in regulations." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied requirements or a standard of proof other than the preponderance of evidence in denying the petition.[3]

The Petitioner further argues the Director "did not give due regard to" certain pieces of evidence, including: her business plan and resume, evidence of her work in the field, letters of recommendation, and industry reports and articles. However, the Director noted that their decision was the result of "a review of the petition and all of the supporting evidence." Throughout the decision, the Director also specifically referenced the evidence identified by the Petitioner. Finally, we have reviewed the entirety of the record de novo in rendering our decision on the Petitioner's appeal.

The Director determined that the Petitioner did not establish that her proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director found the Petitioner did not establish her proposed endeavor would have broader implications to the field of physical therapy or have significant potential to employ U.S. workers or otherwise have substantial positive economic effects such that she established its national importance. The first prong of *Dhanasar*, 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

[2] If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

[3] We also note that the Director's request for evidence (RFE) explained the deficiencies and concerns regarding the Petitioner's initial filing relating to her eligibility for a national interest waiver and provided a non-exhaustive list of documentation and material the Petitioner could submit in support of her petition. Therefore, the Director followed the applicable regulation and procedure in adjudicating this petition. *See* 8 C.F.R. § 103.2(b)(8).

whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner asserts on appeal that her proposed endeavor of coming to the United States to work as a physical therapist and entrepreneur, including opening her own physical therapy business, will generate jobs for U.S. workers and positively contribute to the U.S. economy. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from her proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . .." *Id.* at 890. In her business plan, the Petitioner indicated her proposed company would generate 38 jobs and generate a cumulative $7.8 million dollars in wages to U.S. workers in the first five years of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner has not explained how her proposed employment metrics and revenue would have impact beyond her business's area of intended operations. Upon de novo review, we find no error in the Director's conclusion that she did not establish her proposed endeavor would have significant potential to employ U.S. workers or otherwise have substantial positive economic effects.

The Petitioner further argues that her proposed endeavor will help alleviate the national physical therapist shortage and will be beneficial in promoting wellness, including helping the elderly and individuals with disabilities. She further asserts on appeal that her "proposed endeavor is unquestionably of national importance, given the significant impact of the role that business development professional play in every type of business." In addition, the Petitioner submitted articles discussing the importance of the physical therapy field in reducing opioid abuse and hospital admissions, particularly through the use of appropriate treatment to manage chronic pain. When determining the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. 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.* Although the Petitioner's specific venture has the potential to provide valuable services to her clients, she did not establish the specific proposed endeavor will have substantial national implications or have a broader impact beyond the individual patients served by her company. The Petitioner has also not established that her proposed endeavor stands to significantly reduce a national labor shortage in the physical therapy field as claimed. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. While we acknowledge the importance of the fields of healthcare and physical therapy, we find no error in the Director's conclusion that the Petitioner did not establish her proposed endeavor would have broader implications to the overall field of physical therapy to establish its national importance. *See Dhanasar* at 893 (finding the petitioner did not establish the proposed activities would impact the field more broadly to rise to the level of national importance).

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.