U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32458213

Date: JULY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an ophthalmologist, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

In his professional plans submitted initially and in response to the Director's request for evidence, the Petitioner states his proposed endeavor is to work as an ophthalmologist providing clinical medical care and performing refractive surgery using SMILE, FemtoLasik, Lasik, and PRK techniques, cataract surgery using technologies such as Femtosecond laser, and glaucoma surgery using iStent implantation. The Petitioner explains he will also participate in clinical trials and provide clinics and hospitals with strategic planning, corporate business plans, and information technology management.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

1. Substantial Merit

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner established the substantial merit of his proposed endeavor. We agree.

2. National Importance

The Director concluded the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have substantial positive economic effects or a broader impact on his field outside of his prospective employer or clients.

On appeal, the Petitioner claims the Director did not properly consider his supporting evidence which demonstrates the national importance of his proposed endeavor. He asserts his proposed endeavor will have a significant economic impact because he will contribute to the growth of the healthcare industry by offering specialized ophthalmic services and employing cutting-edge techniques. The Petitioner claims he will promote efficiency in healthcare management through his strategic planning,

business acumen and information technology expertise. The Petitioner does not specify what evidence supports these claims that the Director did not properly consider.

In his professional plans, the Petitioner did not indicate that he would employ U.S. workers or be involved in the employment of other personnel at any hospital or clinic where he would work. In his second professional plan, the Petitioner states his work will impact the economy of the United States by reducing costs and errors and increasing productivity, efficiency and profitability of United States companies. The Petitioner also states he will enable growth in the healthcare field through his innovation and research in ophthalmology. The Petitioner does not specify, however, how his work would extend beyond the individual hospitals or clinics where he would work to financially impact the healthcare industry in a manner commensurate with national importance. *See id.* at 890 (discussing significant potential to employ United States workers and other substantial positive economic effects as indicative of national importance).

The Petitioner also claims his proposed endeavor has national importance because it impacts individual well-being and community health. The Petitioner asserts that by restoring vision and addressing sight-threatening conditions, he will contribute to improved quality of life, which aligns with broader public health goals. We do not discount the Petitioner's extensive experience and skills and ability to successfully treat patients. However, the Petitioner has not demonstrated how his treatment of individual patients would impact ophthalmology or the eyecare industry more broadly. The Petitioner submitted evidence of articles he has co-authored that were published in medical journals and articles he has written for other publications, but he did not submit evidence that his publications have been cited by or otherwise influenced other professionals in his field. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner further asserts his proposed endeavor "is poised to have profound national and global implications within the field of ophthalmology," but does not specify what those implications would be. The Petitioner submitted an article discussing his use of Micro Phakonit, a new technique for cataract surgery in Brazil, but the article states that Micro Phakonit was developed by another physician, A-A-[2] in India. The Petitioner also submitted letters from colleagues praising his work and experience with other techniques. For example, L-S-G- lauded the Petitioner's use of the Small Incision Lenticule Extraction (SMILE) technique, Phakonit method, and implantation of iStent. O-P-F- also praised the Petitioner's skills in Femtolasik, Lasik, and PRK techniques. While they attest to the Petitioner's successful use of these techniques, the Petitioner's colleagues do not indicate that the Petitioner developed or significantly contributed to any of the techniques or other advances in ophthalmology. *See id.* (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

The Petitioner also submitted a letter from Dr. N-N- expressing his opinion that the Petitioner qualifies for a national interest waiver. N-N- opines the Petitioner's proposed endeavor relates to national public health and quality of life because eye health impacts a major portion of the population and professionals like the Petitioner are critical to maintaining eye health. N-N- also states the Petitioner's work aligns with the national interest in addressing healthcare workforce shortages and expanding access to quality healthcare. Our assessment of national importance does not focus on the importance

[2] We use initials to protect the privacy of the referenced individuals.

of issues affecting a field in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. N-N- does not explain how the Petitioner's treatment of individual patients would impact public health in a manner commensurate with national importance.

N-N- also states the Petitioner will impact his field by participating in clinical trials and studies, implementing innovative technology in hospitals, clinics and laboratories, and training others in his field. N-N- summarizes the Petitioner's extensive experience and skills but does not specify how the Petitioner's proposed endeavor would extend beyond his work with individual patients, hospitals, clinics and laboratories to impact his field more broadly on a level commensurate with national importance. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his prospective employers and patients to impact his field more broadly in a manner indicative of national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of 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

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.