U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32372119

Date: JUL. 31, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist and entrepreneur, 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 the Petitioner's eligibility for the requested national interest waiver. 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 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). If, however, a doctoral degree is customarily required by the profession, a noncitizen must have a United States doctorate or a foreign equivalent degree. *Id.*

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;
- 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 the Petitioner qualified as an advanced degree professional, but that he did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and we will dismiss the appeal.

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the Petitioner's proposed endeavor, which aims to provide physical therapy and rehabilitation services to U.S. patients, has substantial merit. Yet, the record does not establish that the endeavor rises to the level of national importance as contemplated in *Dhanasar*.

The record reflects that the Petitioner intends to operate a physical therapy services company in Florida, primarily marketing his services to in-home care services for senior patients to address their healthcare needs in the comfort of their home. The Petitioner explained that home healthcare providers can help with tasks such as bathing, grooming, dressing, and mobility needs, or they may help with the administration of medications, physical therapy, of the performing of basic medical tasks.

In support of his endeavor, the record contains, among other documents, a personal statement, a resume, a business plan, and an expert opinion letter. The Petitioner also provided articles and industry reports discussing the physical therapy field in the United States, including an anticipated labor shortage of physical therapists, along with articles detailing the economic importance of immigrants and entrepreneurs to the U.S. economy.[2]

The Director concluded that the record did not establish the national importance of the Petitioner's endeavor, as it did not show his endeavor would lead to broader implications in the field, beyond the direct benefits provided to his prospective patients, or otherwise result in economic benefits that would rise to the level of national importance.

[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 to be discretionary in nature).

[2] We do not discuss each piece of evidence contained in the record individually, but we have reviewed and considered each one.

On appeal, the Petitioner vaguely asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence establishing his credentials and experience in the field. The Petitioner also emphasizes the provided industry reports and asserts these establish the national importance of his endeavor due to a shortage of professionals within his field, as well as reiterates the information previously submitted in the business plan and contends the information shows the potential impact of his proposed endeavor. The Petitioner does not directly address the Director's conclusions regarding the limited prospective impact of his endeavor, and simply maintains that the evidence on record is sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we agree with the Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor of establishing a company in Florida that provides specialized home health care has national importance as contemplated under the *Dhanasar* framework.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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.

On appeal, the Petitioner reasserts the same arguments as previously discussed and contends that his endeavor is nationally important because it will provide services that will substantially contribute to the improvement of physiotherapy services and healthcare access for the U.S. population which will in turn lead to job creation and tax revenue generation that will positively impact the U.S. population and healthcare industry. The Petitioner also asserts that his endeavor will enhance healthcare access, focus on preventive care, help reduce long-term healthcare expenditures, and provide healthcare services for the aging U.S. population. However, the Petitioner does not provide sufficient evidence to establish that his endeavor will directly result in broader implications to the field or provide sufficient contributions to these efforts beyond benefits to his prospective patients. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). We recognize the overall value of providing physical therapy services; however, the evidence does not sufficiently demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organization and clients he would serve, or that his proposed work would otherwise have broader implications for the healthcare industry or initiatives. For example, the record does not establish the Petitioner has plans to introduce novel methodologies or medical advancements that may be disseminated to or adopted by others

operating in the field or industry, or otherwise articulate how he will contribute to research and development of our nation's physical therapy services.

Likewise, the Petitioner's reliance on the importance of the physical therapy field, the shortages of physical therapists in the United States, and the benefit of entrepreneurship and business development in general to assert the national importance of his endeavor is misplaced. The Petitioner asserts that the industry reports and articles demonstrate the national importance of his endeavor. However as previously discussed, when evaluating 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." *Id.* The industry reports and articles do not discuss the Petitioner's endeavor, nor do they establish how the benefits provided to his patients would result in broader implications to the field.

In addition, while the Petitioner states that his endeavor would address the shortage of professionals in his field, he does not explain *how* his employment as a physical therapist would impact this shortage. The Department of Labor's (DOL) has addressed the shortage of physical therapists by designating physical therapists as a Schedule A occupation under its regulation at 20 C.F.R. § 656.15, which allows U.S. employers to petition for noncitizen workers without first following the regulatory steps to test the labor market prior to filing a permanent labor certification. *See* 20 C.F.R. § 656.17. Notably, filing a permanent labor certification under Schedule A requires a job offer from a U.S. employer as the recognized benefit is to that of the employer, not necessarily to a broader U.S. interest. As such, a claimed shortage of professionals alone is not sufficient to establish the national importance of an endeavor.

Finally, we also agree with the Director that the Petitioner has not established that the endeavor would have a "a significant potential to employ U.S. workers" or otherwise reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The business plan states that, by its fifth year of operation, the company intends to employ 32 employees, have a total annual payroll expense of $1.6 million, and generate total annual sales of $2.9 million. Notably, however, the business plan does not provide sufficient explanation for the basis of these projections. And, even if the endeavor's revenue and job creation projections were properly explained and supported with evidence, they do not establish that the endeavor would operate on a scale rising to the level of national importance, as the Petitioner has not explained how these proposed employment numbers and revenue will impact the area of intended operations.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.