U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31283587

Date: JUN. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental surgeon and prosthodontist, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established 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.

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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The Petitioner's endeavor is to work as a dental surgeon and prosthodontist. In his professional statement, the Petitioner described his endeavor as follows:

> I fully intend to advance in my professional role as a Dental Surgeon Specialist in Prosthodontics by offering my rare expertise in the field to patients and clinics who need prostheses, implants, dental surgeries, and related issues. My refined academic and practical skills allow me to offer innovative solutions to dental problems that are constantly patient-sensitive. I also intend to offer my desired skill to the dental market in prosthetic technology, as a way of promoting the best solution to the patient. Additionally, by advancing in the development of expertise in the dentistry field, I will improve America' welfare and well-being by providing my know-how to patients in Florida's community and to the United States.

The Director concluded that the proposed endeavor has substantial merit, but not national importance. The Director further determined that the Petitioner is well-positioned to advance his proposed endeavor, but he did not show, on balance, any national interest factors that would outweigh the benefits inherent in the labor certification process.

We adopt and affirm the Director's analysis and decision regarding the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Based on the government and industry reports on record that discuss the importance of dental health and the growing dental market, the Director acknowledged that the Petitioner's endeavor in the field of dental surgeries and prostheses has substantial merit. However, the Director pointed out that the Petitioner's specific endeavor, rather than the field or profession, is the focus when evaluating national importance in the context of a national interest waiver. *See Dhanasar*, 26 I&N Dec. at 889.

In denying the petition, the Director determined that the endeavor would not result in broad implications to impact the field or have significant potential to employ U.S. workers, particularly in an economically depressed area. *Id.* at 889-90. The Director highlighted the lack of objective and corroborating evidence to support the claims of national importance made in the Petitioner's statements and letters. The Director further considered the expert opinion but determined that it merely reiterated the Petitioner's claims about a shortage in dental professionals and the need to reach underserved population with dental health issues and did not meaningfully discuss the specifics of the

Petitioner's proposed endeavor or how such endeavor will directly contribute to diminishing the dentist shortage in the United States. The Director also evaluated recommendation letters that praised the Petitioner's track record in dentistry in Brazil as well as his knowledge of "a software for planning and 3D milling machines for making dentures" called CAD/CAM technology (Computer-Aided Design and Computer-Aided Manufacturing). However, the Director found that the record does not sufficiently demonstrate that his knowledge of such technology rises to the level of national importance as contemplated by *Dhanasar*: "[a]n undertaking may have national importance for example, 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 890.

On appeal, the Petitioner does not provide any new evidence or arguments to overcome deficiencies noted by the Director or identify any errors on the part of the Director. Instead, the Petitioner submits with the appeal the same professional statement and refers to the previously submitted evidence in his brief. The Petitioner broadly claims that he "provided comprehensive evidence" and "extensive documentation" to establish national importance of his endeavor. The Petitioner also asserts that his endeavor "will have an effect that extends beyond the patients he will care for" and "potentially have an impact on the proper and intended operation of the entire healthcare system." However, the Petitioner still has not provided independent and corroborating evidence to support his generalized claims of the endeavor's broad impact on the field or substantial economic effects. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Based on the foregoing, we conclude the Petitioner has not established that his proposed work is of national importance as required by the first prong of the *Dhanasar* framework and he is not eligible for a national interest waiver as a matter of discretion. Therefore, further discussion of the second or third prong would serve no meaningful purpose. *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).

ORDER: The appeal is dismissed.