U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31281836

Date: JUN. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a speech therapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability, 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 Center denied the petition, concluding that the Petitioner did not qualify for classification as an advanced degree professional. The Director further concluded that the Petitioner had not established 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 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) 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 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

A. EB-2 Classification

The Petitioner was awarded a bachelor's degree in speech-language pathology and audiology from [redacted] The Petitioner submitted translated copies of her diploma, certificates, transcripts, and her resume. The Director determined that the degree and transcript is insufficient evidence, and noted the Petitioner did not submit a reliable, independent credential evaluation indicating her foreign degree is equivalent to a U.S. bachelor's degree.

As noted above, the regulation states that eligibility as an advanced degree professional may be shown if a petitioner is a member of the professions with a bachelor's degree and five years of post-degree experience in their specialty. On appeal, the Petitioner submits an educational evaluation from World Education Services indicating she has earned the equivalent of a U.S. bachelor's degree. In addition, the record includes letters from the Petitioner's former employers to indicate that she was employed as a full-time speech pathologist for more than five years after completing her degree. We conclude that she has established her eligibility as a member of the professions holding an advanced degree, and thus for the EB-2 classification, and vacate the Director's decision in this sole issue.

B. National Interest Waiver

The Petitioner indicated she has over 23 years of professional experience as a speech therapist, and her proposed endeavor is to work as a speech pathologist focusing on the Hispanic-Latino population in New Jersey and eventually expanding to New York and Pennsylvania. The Petitioner explained that her work will involve screening for speech, language, and hearing pathologies, early childhood stimulation, therapeutic intervention, voice pathology treatment, and feeding difficulties in children and older adults. The Petitioner argues that her proposed endeavor is of national importance because of the increased demand for healthcare services and the shortage of healthcare workers, particularly in light of the COVID-19 pandemic whereby numerous survivors suffer from long-haul symptoms. She intends to provide health care services to those in need, while also providing preventative healthcare services. The Petitioner also stated that she will educate parents and professionals for early detection and timely care of language and hearing disorders to achieve successful recovery and alleviate the strain on the healthcare system and avoid additional costs. Further, the Petitioner stated she will train health professionals which in turn will generate jobs, provide patients with a better quality of life, and decongest the hospital system.

[1] *See also 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).

The Director concluded that although the Petitioner established the substantial merit of her proposed endeavor, she had not demonstrated its national importance.

As evidence of her proposed endeavor's national importance, the Petitioner submitted a business plan, personal statements, letters of recommendation, and industry reports and articles. In her personal statements, she outlines her years of work experience in Colombia providing speech therapy services as evidence of her ability to perform the same services in the United States. Regarding the Petitioner's reliance on her past work experience, credentials, and past accomplishments as a speech language pathologist and therapist, such expertise would be relevant to our analysis under the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed work.

In *Dhanasar*, we 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.* at 889. 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. While the Petitioner asserts that her services will include educating the population on how to recognize the presence of language or hearing disorders and address them promptly, she has not sufficiently explained how she will educate the population and how many individuals will receive this education. The Petitioner stated she will provide consulting services to day care centers, schools, and City Halls, but did provide sufficient information of how her consulting services will educate the population. The Petitioner also stated she will focus on the implementation of home therapies to help the elderly and patients affected with long term symptoms from COVID-19, which will in turn provides home rehabilitation and lowers hospital congestion. However, it is not clear how many patients the Petitioner will be able to assist, and the Petitioner did not demonstrate the broader implications of her endeavor, or that her work would impact her field, as opposed to just her personal patients, in order to demonstrate national importance. Although we acknowledge that her endeavor, if carried out as described, may provide her patients with improved healthcare outcomes, it is unclear how this would prospectively impact the field in a broader sense. For all these reasons, she has not documented that the particular work she proposes to undertake offers original innovations that contribute to advancements in home healthcare or speech therapy or otherwise has broader implications for her field.

We are also not persuaded by the Petitioner's arguments that the proposed endeavor has national importance due to the shortage of professionals in her field. First, the Petitioner has not established that her proposed endeavor would sufficiently impact or significantly reduce the claimed national shortage. Second, the U.S. Department of Labor directly addresses labor shortages through the labor certification process. Therefore, a shortage of healthcare workers is insufficient, by itself, to establish the national importance of her endeavor.

In addition, the record does not establish how the Petitioner's proposed endeavor may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. The Petitioner explained that she will create jobs by training healthcare professionals on home therapies. Although the Petitioner asserts that her endeavor will enhance job creation, the record does not establish with probative information

the types of jobs her endeavor may create, the number of workers her endeavor may cause to be employed, where those workers will work, and other details that may establish the endeavor has "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See id.* Additionally, although the Petitioner asserts that she will train healthcare professionals to help with the shortage in the country and improve healthcare in the United States, the record does not establish how the Petitioner would manage and train healthcare professionals, and how many professionals would receive this training, and whether the training techniques she will provide are different from what is already available in the United States in order to establish that the proposed endeavor would have broader implications indicative of national importance. *See id.*

Because the record does not sufficiently establish the national importance of her proposed endeavor as required by the first prong of *Dhanasar's* analytical framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs of *Dhanasar's* analytical framework. *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 did not otherwise meet their burden of proof).

III. CONCLUSION

As the record does not establish that the Petitioner has met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.