U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31509053

Date: JUN. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a psychologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 had not established eligibility for 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.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- 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 job offer requirement would benefit the United States.

The Director determined the Petitioner qualified as a member of the professions holding an advanced degree. The remaining issue to be determine on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

[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 Petitioner intends to train health professionals to implement tools provided by neuroscience to evaluate, diagnose, and rehabilitate athletes struggling with their mental health through a program called [redacted] The endeavor will build upon the Petitioner's extensive experience with clinical neuropsychology, cognitive training, and neuropsychological rehabilitation to protect the mental health of athletes in the United States.

On appeal the Petitioner asserts that the Director examined the letters of support for the national importance prong instead of the public documents. The Petitioner contends that the public documents submitted, including studies published by the National Center for Biotechnology and ScienceDirect, establish the critical need for her services and that in examining the incorrect evidence to support the first prong of the *Dhanasar* analysis, the Director's determination is in error.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. We agree with the Director's conclusion that the Petitioner's proposed endeavor, providing mental health services to athletes, has substantial merit. However, while the Petitioner established that the proposed endeavor has substantial merit, the record does not indicate that it has national importance.

In analyzing 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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner contends that the many documents from federal agencies and media showcase the critical need to address traumatic brain injuries, the matter here is not whether these initiatives, as well as the mental health of struggling athletes are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of promoting the mental health of athletes, furthering research on concussions in sports, and contributing to employment of professionals in neuropsychology. Likewise, the Petitioner's submission of research noting the importance of diagnosis and the Biden Harris administration's current emphasis on mental health cover mental health disorders in general, rather than establishing the national importance of her particular professional services and business.[2] 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.* 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. The Petitioner contends that her endeavor, [redacted] is nationally important because it has the potential to reduce the significant annual costs of sports injuries in colleges and high schools. Yet, the Petitioner does not provide support for these assertions and continues to rely on the importance of the psychology field in general, claiming for example, that the endeavor will "support government efforts to mitigate the shortage of trained professionals in the field of mental health." However, this misapplies the *Dhanasar* framework. As previously discussed, in determining national importance, the relevant question is not the importance of the industry or profession in which

[2] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

The Petitioner also maintains that her proposed endeavor "will train professionals in the mental health and neuropsychology field, generating more employment opportunities for them, which clearly aligns with the government's current need to meet the strong demand for trained professionals in the mental health field." However, the alleged shortage of occupations or occupational skills does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Finally, the Petitioner did not explain how her mental health services and research in high impact sports-related injuries have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. While the Petitioner continues to make general claims concerning the health and overall performance of athletes, and the employment of trained professionals, the Petitioner did not sufficiently detail or demonstrate how her particular proposed endeavor would have any projected U.S. economic impact or job creation. For example, she did not explain with sufficient detail how she would conduct research and launch the proposed services on a scale of national impact. It is noteworthy that the Petitioner does not discuss or document any previous experience undertaking a similar high impact project, or detail how the project would be conducted and expanded nationwide. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from her services and how the endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).