U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31201350

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an orthodontist/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 Petitioner did not establish that he was eligible for the requested classification or that a waiver of the classification's job offer requirement, 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

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).

Once eligibility for the EB-2 visa classification is established, 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 that the Petitioner was a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he has more than 17 years of experience as a dentist, with over 10 years of experience owning and operating his own clinic. He states that his proposed endeavor is to open his own dental clinic to "work as an Orthodontist (with a special emphasis in the area of prosthodontics) in the United States." He states that his clinic will "primarily serve American communities that have limited access to dental healthcare, either because of an acute shortage of dentists … or because of their socioeconomic backgrounds."

With the initial filing the Petitioner submitted evidence of his education and experience, a professional plan and statement describing his proposed endeavor and claimed eligibility for a national interest waiver, recommendation and support letters, and an expert opinion letter. He also submitted industry reports and articles discussing the state of dental care in the United States, the benefits of entrepreneurship, and the important role of immigrant entrepreneurs in the U.S. economy.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Petitioner's response to the RFE includes a business plan for his proposed endeavor, evidence of funding, letters of interest, additional recommendation and support letters, and additional articles and industry reports.

---

[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).

[2] The record demonstrates that the Petitioner holds the foreign equivalent of a first professional degree in dentistry awarded in 2006. *See* 8 C.F.R. § 204.5(k)(3)(i).

The Petitioner's business plan states that his clinic will be established in Massachusetts and will later expand to "provide dental services throughout the United States by partnering with other dentists." The Petitioner will serve as managing director and dentist, providing multidisciplinary dental care. The plan anticipates that the company will employ 11 employees in its first five years. The plan forecasts that the company will have sales of over $1.5 million by its fifth year, with payroll expenses of $978,421 and tax expenses of $44,773.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor has national importance, that he is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification. The Director stated that the record did not demonstrate that the Petitioner's proposed endeavor will have a regional or national impact at a level consistent with having national importance, or that the Petitioner's work will have broader implications in the field of dentistry. In analyzing whether the Petitioner is well-positioned to advance his proposed endeavor, the Director specifically noted that the Petitioner's claimed full-time experience overlapped in years, including experience he claimed was gained in multiple locations in Brazil and in the United States during the same period. Additionally, the Director determined that the Petitioner did not demonstrate national interest factors such as the impracticality of a labor certification, the benefit of his prospective contributions to the United States, an urgent national interest in his contributions, the potential creation of jobs, or that his self-employment does not adversely affect U.S. workers.

On appeal, the Petitioner submits a brief and asserts that the Director did not give due regard to evidence in the record and imposed a novel standard of proof. The Petitioner also asserts that he was "deprived of due process rights and a fair treatment." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

A. Substantial Merit and National Importance

The first 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. As noted above, the Director determined that the Petitioner's proposed endeavor has substantial merit and we agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Id.* In *Dhanasar*, we further 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.

Although the Petitioner submits articles and industry reports describing the importance of entrepreneurship on economic growth, many of these reports are not specific to the field of dentistry.[3] An article from The New Yorker, dated June 2018, and titled "Why the United States Needs More Immigrants," discusses the benefits of immigrants entering the workforce to replace the aging generation that is exiting the workforce through retirement. However, the report is six years old and analyzes the U.S. workforce generally. It does not provide any information about the Petitioner's specific proposed endeavor in the field of dentistry. Nor is the information discussed specific to Massachusetts, the location of the Petitioner's proposed business.

Additional reports discuss a shortage of dentists and dental care availability in the United States but are not specific to the Petitioner's proposed endeavor or the location of his business. As noted above, when determining national importance, we examine the Petitioner's specific proposed endeavor, rather than focusing on the importance of the industry or profession in which the individual will work. *See Matter of Dhanasar*, 26 I&N Dec. at 889; *see also* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual ("In determining national importance, the officer's analysis should focus on what the beneficiary will be doing rather than the specific occupational classification."). Further, the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Much of the Petitioner's evidence relates to the importance of entrepreneurship generally or a shortage of dentists, rather than his specific proposed endeavor. Even considering the articles, reports, and statistics collectively and in the totality of circumstances, we still conclude that they do not support a finding that his specific proposed endeavor has national importance.

The Petitioner also submits his business plan dated April 2023 to support the national importance of his proposed endeavor. As noted, to establish national importance, the Petitioner must demonstrate the proposed endeavor's impact. Although the Petitioner states that his experience in dentistry, including in underserved communities, will contribute to the U.S. economy, he has not supported these assertions with sufficient independent, objective evidence. The projections of the Petitioner's company's revenue and job creation as stated in the business plan are also unsupported in the record. The evidence does not suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States. Nor does the evidence demonstrate that the use of the Petitioner's experience will reach beyond benefitting his own company and clients or have broader implications within the field of dentistry. The record does not establish that his proposed endeavor stands to impact the field as a whole.

The Petitioner also submits an expert opinion prepared by Dr. [redacted] of the [redacted] Department of Dental Sciences, as well as recommendation letters from current and former employers praising the Petitioner's education, experience, past success, personal qualities, and the results he achieved. However, these qualities relate to the second prong of the *Dhanasar* framework, that the individual is well-positioned to advance their proposed endeavor, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

[3] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In her analysis, Dr. [redacted] briefly discusses the history of dental care in Brazil and concludes that, "U.S. dental clinical institutions operating or planning to operate in Brazil would benefit from the expertise and skills of a dental surgeon such as [the Petitioner]." However, she does not elaborate on how the Petitioner's specific proposed endeavor will have a prospective impact on the United States, including the national or global implications on dentistry, the potential to employ U.S. workers, or the positive economic effects.

Additionally, we note that the Petitioner states in his personal statement and business plan that he intends to provide orthodontist services (specifically prosthodontics) in the United States. He does not describe an intention to operate his U.S. businesses in Brazil, as the expert opinion discusses, or to provide services as a dental surgeon. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

On appeal, the Petitioner relies upon the evidence he previously submitted and asserts that the Director imposed a "novel standard" and did not consider the evidence objectively. The Petitioner does not identify the Director's standard or any erroneous applications of law. Although the Petitioner states that the Director did not give due regard to his resume, business plan, evidence of work in the field, letters of recommendation, and industry reports, each of these was discussed in the Director's decision.

The Petitioner also asserts on appeal that he was deprived of "due process and fair treatment" because the Director "erroneously denied further analysis of [the second and third *Dhanasar* prongs] and reasoned that there is no meaningful purpose for this analysis."[4] However, the Petitioner is incorrect. The Director provided a full analysis of the Petitioner's eligibility for a national interest waiver under all three *Dhanasar* prongs in her decision. As noted above, in her analysis of whether the Petitioner is well-positioned to advance his proposed endeavor the Director noted inconsistencies in the Petitioner's claimed work experience, including experience he claimed was gained in multiple locations in Brazil and in the United States on overlapping dates. The Petitioner does not address this or resolve these inconsistencies on appeal. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the importance of entrepreneurship. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

[4] Although the Petitioner invokes his right to due process alleging that the Director's denial deprived him of further review and a fair chance to obtain the immigration benefit, it is not apparent what action the Petitioner finds violative of due process. In any event, we have no authority to entertain constitutional due process challenges to lawful USCIS action. *Cf. Matter of Salazar-Regino*, 23 I&N Dec. 223, 231 (BIA 2002). Even if we did have that authority, the parties must demonstrate a showing of "substantial prejudice" to prevail on a due process challenge. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004). The Petitioner has not shown any violation of the regulations that resulted in "substantial prejudice."

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs.[5] *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[5] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he was well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner met the three *Dhanasar* factors and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.