U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31111634

Date: JUNE 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish she merits a discretionary waiver of the job offer requirement 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)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as a

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.

Id.

II. ANALYSIS

The Director determined that the Petitioner established her eligibility for the underlying EB-2 classification as an advanced degree professional. Upon de novo review, we agree with the Director's determination.[2]

The issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of the classification's job offer requirement. The Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish that she is well positioned to undertake the endeavor under *Dhanasar's* second prong, 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 under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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. In determining national importance, 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." Id.

The Petitioner proposes to work in the United States as a nurse specializing in geriatric care. The Petitioner states she would "help assist hospitals and clinics, along with the retirement community, with elderly needs." Her work would include implementing her technical knowledge to help institutions that take care of the elderly to plan, structure, and monitor fall indictors; assist in the prevention and treatment of chronic and acute diseases; and provide multilingual services to help serve non-English speaking patients. She would also "educate other healthcare professionals in monitoring the level of risk and independence among the elderly, as well as their mental and physical state." The

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma, her academic transcript, an academic evaluation, labor cards, and employment letters. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

Petitioner indicates that her work will contribute to overcoming the shortage of knowledgeable and qualified nurses in the healthcare industry and improve public health and elder healthcare. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor has the potential to extend beyond her patients to impact the field of nursing or the healthcare industry more broadly. The Director further found that the Petitioner did not demonstrate her endeavor has significant potential to offer substantial positive economic effects. Therefore, the Director determined that the Petitioner did not demonstrate that her endeavor is of national importance and did not meet the first prong of the Dhanasar framework. Upon de novo review, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that she submitted sufficient evidence detailing and supporting the national importance of her proposed endeavor. She argues that the Director ignored "the totality of the evidence submitted" and overlooked arguments and evidence submitted with the petition and her response to a request for evidence. Specifically, she references her supporting letter, a professional plan, letters of recommendation from industry professionals, and research and articles showing she will contribute to the field and help ease the U.S. nursing shortage.

When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992)); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). Here, although the Director's decision did not individually analyze each piece of evidence, it reflects a reasoned consideration of the evidence. The Director, in evaluating whether the Petitioner had established that she meets the first prong of the Dhanasar framework, weighed all the evidence but determined that the evidence overall lacked probative value. See Matter of Chawathe, 25 I&N Dec. at 376 (explaining that under the preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence); Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner then argues that the Director incorrectly focused on her endeavor's lack of economic or job productivity benefits, instead of her claims that her endeavor has national importance based on potential health and societal welfare benefits, which are accepted under the USCIS Policy Manual. See generally 6 USCIS Policy Manual, F.5(D)(1), https://www.uscis.gov/policymanual. She stresses the need for immigrant nurses in the United States to alleviate the shortage of qualified nurses. By hiring qualified nurses such as herself, she maintains that her work would provide "positive health outcomes and reduce the risk of patient mortality, which has national implications in the healthcare field." (emphasis omitted). She argues that one nurse, such as herself, "has an impact in the nursing field and healthcare industry more broadly by lowering the patient-to nurse ratio and lowering the risk of mortality." (emphasis omitted). She relies on studies in the record to show a "significant reduction in patient mortality by the increase of [one] full-time registered nurse." (emphasis omitted). She argues that reports and articles in the record show the important role that nurse professionals play in the health field, particularly the quality of health for the elderly population.

With the petition, the Petitioner submitted a professional plan explaining the growing need for qualified nurses, the U.S. shortage of nurses and healthcare professionals, and her willingness to help the increasing elderly population. Her professional plan also stresses her bilingual skills and the importance of such skills in the healthcare field. She also submitted industry reports and articles to show her work as a nurse would help mitigate the shortage of qualified nurses for the elder population and the importance of her bilingual skills for the healthcare industry. The reports and articles relate to the role of nurses; a nursing industry analysis; the importance of safe nurse staffing ratios; nurse staffing shortages in the United States; immigration policies affecting nursing shortages; disease prevention; protecting seniors by improving safety and quality of nursing homes; preventing falls in older age; effects of nursing home staff shortage on hospitals; impacts of nursing shortages on patient care and increased healthcare costs; changes to long-term care post COVID-19; long-term care for patients with dementia; financing long-term care; patients with cancer; care for the aging population; chronic health conditions in older adults; the benefits of bilingual nurses; the role of regulatory bodies in healthcare; and government initiates attracting science, technology, engineering, and mathematics talent to strengthen the U.S. economy and its competitiveness.

We recognize the importance of the healthcare industry, the nursing field, and related careers, and the significant contributions from immigrants who are nurses in the United States; however, merely working in the healthcare field as a nurse is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889. We acknowledge that a shortage of nurses and healthcare professionals demonstrates substantial merit of a proposed endeavor; however, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the field. The U.S. Department of Labor through the labor certification process directly addresses such shortages of qualified workers. The issue here is whether the Petitioner has established how her proposed endeavor would affect national nursing and healthcare employment levels or the U.S. economy more broadly consistent with national importance.

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. Also, evidence demonstrating a "proposed endeavor has the significant potential to broadly enhance societal welfare . . . may rise to the level of national importance." See generally 6 USCIS Policy Manual, supra, at F.5(D)(1). However, the industry reports and articles and other evidence submitted do not discuss how the Petitioner working as a nurse for a healthcare facility will address or overcome the shortage of nurses and healthcare workers in the United States.

The Petitioner further claims that the national importance of her endeavor is demonstrated by her intent to educate other healthcare professionals in monitoring the elderly population's level of risk and independence, as well as their mental and physical state. Referencing her more than 20 years of nursing experience, with 13 years supervising geriatric medical care teams, she argues her work educating other nurses has significant potential to broadly enhance societal welfare and contribute to

the care and treatment of the elderly. In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact the field more broadly. Matter of Dhanasar, 26 I&N Dec. at 893. Similarly, the record does not demonstrate that the Petitioner's proposed work of educating other healthcare professionals has the potential to substantially benefit the healthcare field, 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. The evidence does not suggest that the Petitioner's work educating other healthcare professionals would impact the healthcare field more broadly.

The Petitioner also argues that letters of recommendation from her employers and colleagues show the national importance of her work. The recommendation letters attest to the Petitioner's technical nursing knowledge by describing her successful treatment results for individual patients and her commitment to her employers and patients. We acknowledge that the Petitioner provided valuable nursing services for her employers and her patients, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate her claims of providing broader impact in her field rising to the level of national importance. While the Petitioner's employers and colleagues generally attest to the Petitioner's dedication to her patients and to improving their health, the content of these letters relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The second prong of the Dhanasar framework "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Id. at 889. Here, the Petitioner has not submitted sufficient documentary evidence to establish that her proposed job duties as a co-owner, chief physiotherapy officer, and clinic manager of her health and wellness clinic business would impact the physical therapy field more broadly, rather than benefiting her business and her clients.

To further support the national importance of her endeavor, the Petitioner submitted an opinion from a professor for the nursing department at [redacted] The opinion states the Petitioner's "work is in demand and of national importance in the field of [n]ursing. Nursing jobs are growing, and it is projected that more nurses will be needed in the coming years. Therefore, her proposed endeavor has both substantial merit and national importance." The opinion describes the expected growth of the healthcare industry and related careers, and the increase demand for nurses based on the increase of the aging population. However, the opinion focuses on the need for nurses and how the Petitioner's nursing experience in Brazil makes her capable to provide nursing services in the United States, instead of the Petitioner's specific endeavor having a prospective impact in the field of nursing. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). As previously discussed, stating that the Petitioner's work would support an important industry with a shortage of qualified professionals is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

Based on the above, the Petitioner has not demonstrated that her proposed endeavor has the potential to extend beyond her prospective employers and her future patients to impact the healthcare field or U.S. societal welfare more broadly at a level commensurate with national importance. She has not demonstrated that the work she proposes to undertake as a nurse for a healthcare facility offers innovations that contribute to advancements in her industry or otherwise has broader implications for her field or societal welfare. As a result, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

III. CONCLUSION

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the Dhanasar framework. 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.