U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30867408

Date: JUN. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nurse, seeks classification as a member of the professions holding an advanced degree. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Workers (NIW application), concluding that while the Petitioner established her eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not demonstrate her eligibility for the requested national interest waiver because she was not well positioned to advance her proposed endeavor. 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.

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification under section 203(b)(2)(A) of the Act, 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.

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.

Id.

II. ANVANCED DEGREE

According to the Petitioner, she meets the eligibility requirements for EB-2 visa classification as a member of a profession with an advanced degree. In the record below, she asserted she has a foreign degree equivalent to a U.S. bachelor's degree of science in nursing and eight years of significant post-baccalaureate experience working for different health care institutions. The Director agreed, determining the Petitioner had established she had a U.S. baccalaureate degree and at least five years of progressive post-baccalaureate experience in the specialty as required by 8 C.F.R. § 204.5(k)(2). We withdraw the Director's determination that the Petitioner is an advanced degree professional.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. 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. Id.

The Petitioner provided her diploma evidencing she earned her nursing degree, titled "bacharela em enfermagem," in Brazil in December 2015 and her transcript showing she completed four years of full-time classes and six months of an internship to obtain the degree. She also provided a certificate demonstrating she enrolled in a lato sensus graduate course in 2016. In a cover letter included with her NIW application, the Petitioner explains she completed the course requirements but was unable to complete her final project because she relocated to the United States and was not awarded a diploma. According to the record, she was enrolled in the lato sensus course for six months.

Information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) provides:[2]

> The 3-year Título de Bacharel/Grau de Bacharel represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a

[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).

[2] EDGE is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. See AACRAO, Who We Are, https://www.aacrao.org/who-we-are. We consider EDGE to be a reliable source of information about foreign credential equivalencies. See Confluence Intern., Inc. v. Holder, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); Tisco Group, Inc. v. Napolitano, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); Sunshine Rehab Services, Inc. No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also Viraj, LLC v. Holder, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

course-by-course basis. The 4- or 5-year Título de Bacharel/Grau de Bacharel represents attainment of a level of education comparable to a bachelor's degree in the United States.[3]

EDGE also indicates that:

> Professional development and specialization programs are considered lato sensus (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees. They require 1 to 2- or 1- to 3- years of study.[4]

Based on the above, the Petitioner has established she holds the foreign equivalent of a bachelor's degree, but not a degree above that of a baccalaureate. See 8 C.F.R. § 204.5(k)(2) (defining advanced degree).

However, the Petitioner has not established she has at least five years of progressive post-baccalaureate experience in nursing. Id. In a letter dated November 2022, the Petitioner's former supervisor explained the Petitioner worked part time from February 2014 to February 2015 as a nursing intern for their employer, a large health operator. The supervisor added that the Petitioner was later hired as a data collection analyst from April 2016 to July 2017 and provided a description of the Petitioner's duties. In a separate letter dated August 2022, an individual from personnel administration for the Petitioner's former employer confirmed the Petitioner's employment dates, her title, and that she was a full-time employee. The Petitioner stated, and the record supports, that after leaving her employer in Brazil, she came to the United States on a student visa in August 2017 and obtained an associate's degree in business administration from [redacted] Illinois. The Petitioner obtained authorization to work in the United States and began working as a clinical database coordinator at a children's hospital in [redacted] in August 2022. She filed her NIW application in February 2023.

Based on the record, the Petitioner obtained her degree in nursing in December 2015 and began working in April 2016, accumulating a year of work experience before leaving to come to the United States in August 2017. She then began working again in August 2022, accumulating another six months of experience prior to filing her NIW application in February 2023. The Petitioner's total work experience after obtaining her nursing degree does not amount to over five years of progressive post-baccalaureate experience, as required.

In the record before the Director, the Petitioner also claimed that she qualifies for EB-2 classification as an individual of exceptional ability. However, the Director did not analyze this issue, and we conclude below, the Petitioner is not eligible for a discretionary waiver of the job offer requirement "in the national interest," which is dispositive of this appeal. For this reason, we reserve the issue of whether the Petitioner is an alien of exceptional ability. 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

[3] AACRAO, Título de Bacharel/Grau de Bacharel (Title of Bachelor), https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-bacharel-grau-de-bacharel-(title-of-bachelor) (last visited June 7, 2024, and incorporated into the record).

[4] AACRAO, Brazil, https://www.aacrao.org/edge/country/brazil (last visited June 7, 2024, and incorporated into the record).

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).

III. NATIONAL INTEREST WAIVER

A. Substantial Merit and National Importance

The Director determined the Petitioner established that her proposed endeavor is of substantial merit and national importance as required under the first prong of Dhanasar for demonstrating eligibility for a national interest waiver. However, we withdraw the Director's determination that the Petitioner's endeavor is of national importance.

The Petitioner submitted a business plan, titled personal plan in the underlying record, which explained her proposed endeavor is to deliver the best nursing care practices to patients in the United States and to strengthen the U.S. economy by filling the existing gap in the nursing market. The Petitioner explained in her personal plan that her endeavor is of national importance because the U.S. health care industry is experiencing immense workforce shortages all over the nation. She stated nurses impact the quality of care in various healthcare settings and having appropriate nursing staff achieves clinical and economic improvements in patient care. In her personal plan, she described how nurses contribute to the health of U.S. citizens and is a vital component of the healthcare system, both economically and socially, and how there is a deficit in the U.S. skilled workforce. She submitted articles discussing, for example, the demand for healthcare workers, the U.S. and global nursing shortage, healthcare worker burnout, declining enrollment rates in nursing schools and in college enrollment. She explained that she will provide excellent patient care services and provide patients with resources to improve their lives.

In the record below, the Petitioner explained that she will contribute to improving the quality-of-care patients receive and enhance nursing services by using her vast-industry-related experience and knowledge to provide extensive nursing, auditing, and health data analysis services. The Petitioner stated data analytics has grown in importance and was used to manage global health and improve treatment during the Covid-19 pandemic. She explained that nursing audit, which is a review of patient records to identify, examine, verify the performance of nursing care using an established criteria is a fundamental tool for quality assurance. The Petitioner asserts that because of her wealth of experience auditing and analyzing medical data, she will contribute to hospitals, health insurance companies, and businesses that offer healthcare.

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. Matter of Dhanasar, 26 I&N Dec. at 889. Because the record reflects the proposed endeavor falls within one or more of these areas, the Petitioner has established the substantial merit of her endeavor.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. 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. While we recognize that a pre-existing nursing shortage places the Petitioner's nursing work in high demand, shortages of occupations or occupational skills do not render the Petitioner's proposed endeavor nationally important under the Dhanasar framework. Shortages of qualified workers are directly addressed by the U.S. Department of Labor through both the labor certification process and its designation of professional nurses as a Schedule A occupation. See generally 6 USCIS Policy Manual E.7(A), https://www.uscis.gov/policy-manual (providing, as guidance, a background of Schedule A designation petitions). We also acknowledge the Petitioner's statements that nurses contribute to the health of U.S. citizens and are a vital component of the healthcare system, both economically and socially. However, in determining 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 "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner did not elaborate on how her proposed employment as a nurse providing patient care, auditing, and health data analysis would have broader implications for the field of nursing, how it would "contribute to improving the quality of care patients receive" on a national level, or how her "nursing, auditing, and health data analysis services" would specifically contribute to enhanced nursing services so that it would impact the U.S. healthcare field more broadly. See id. at 893 (determining the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly). The Petitioner has therefore not demonstrated how her proposed endeavor's impact would extend to the broader field of nursing or the healthcare industry to establish the national importance of her endeavor.

B. Well Positioned to Advance the Proposed Endeavor

In the record below, the Petitioner described herself as highly experienced in the areas of medical auditing, nursing, and health data analysis. She asserted she is proficient in data quality management systems, auditing software, and health coding standards. She highlighted her education, noting her four-year nursing degree from Brazil, her associate's degree in business administration obtained in the United States, and a lato sensus course she attended in Brazil. She explained she is close to fulfilling the criteria to become a registered nurse in the United States. She also described the research she conducted and the academic events and internships she took part in while pursuing her nursing degree. In response to the Director's request for evidence, the Petitioner explained again that she worked for a prominent Brazilian healthcare provider and operator of health plans, first as an intern and then from 2016-2017 as a nurse analyst. She also noted again that she is currently employed as a clinical database coordinator for an esteemed children's hospital in [redacted] a job she began in August 2022. She described her duties and noted the letters of recommendation submitted by her colleagues attesting to her professional abilities. The letter from her current supervisor described her skills, database and clinical knowledge, and her current role. A separate letter from the Petitioner's supervisor during a nursing internship described the Petitioner as committed, exemplary, responsible, explained what they worked on together, and described her academic performance while she pursued her nursing degree. The remaining recommendation letters are from the Petitioner's colleagues describing the duties the Petitioner performed and opining that her skills and background will serve the best interest of the U.S. government.

In the decision denying the NIW application, the Director listed the evidence submitted by the Petitioner, including the evidence discussed above, which we hereby incorporate by reference. After considering the relevant evidence, the Director determined the Petitioner had not established she was

well positioned to advance her proposed endeavor. According to the Director, the record did not establish that the Petitioner gained recognition for significant contributions in the field, her work has influenced her field of endeavor, she has a leading, critical, or indispensable role in the endeavor or similar endeavors, or her expertise is recognized to be significantly above others in her field. The Director explained that the Petitioner's solicited letters of recommendation outlined her skills but did not address her achievements or significant contributions to the industry, and her certificates and training documentation similarly did not evidence the Petitioner's contributions to the industry but rather documented trainings she completed as part of her job.

Based on a de novo review, we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that she is well positioned to advance her proposed endeavor. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Prado-Gonzalez v. INS, 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"). Below we provide individualized consideration to the Petitioner's appellate claims.

The second prong of Dhanasar shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: a petitioner's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Id. at 890; see generally 6 USCIS Policy Manual, supra, at F.5(D) (explaining, as guidance, factors that may demonstrate a person is well positioned to advance a proposed endeavor).

On appeal, the Petitioner categorizes the evidence in the record below in an effort to demonstrate the factors relevant to the second Dhanasar prong and asserts that the Director erred by incorrectly applying the guidance provided in the USCIS Policy Manual. The Petitioner asserts her degrees, accomplishments and letters of recommendation demonstrate her education, skills, knowledge and record of success in related or similar efforts. The Director's decision addressed why the Petitioner's degrees, letters of recommendation, and certificates did not establish that she was well positioned to advance her endeavor and the Petitioner does not specifically identify how the Director erred with respect to applying USCIS policy. Moreover, simply having education, skills, and/or knowledge does not place a petitioner in a position to advance their proposed endeavor. This is only one factor among many which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. The Petitioner also asserts that her published scientific articles submitted below also evidence her record of success. However, she did not provide documentation demonstrating the significance and impact of her articles in the industry, such as evidence they had a strong citation history. See generally 6 USCIS Policy Manual, supra, at F.5(D)(1) (providing, as guidance, examples of when published articles may demonstrate an individual is well position to advance their endeavor).

The Petitioner re-asserts that her personal plan is evidence of a model plan of her past and future activities related to her endeavor. However, the personal plan does not detail how the Petitioner herself has impacted the industry or how she intends to advance her proposed endeavor. Rather, it discussed her endeavor more generally, and summarizes the evidence in the record, i.e., it discusses her

professional and academic background, the articles she published, the associations she is a part of, the need for nurses, the importance of nurse auditing on patient care practices, and how nurses contribute to the health of U.S. citizens and is vital to the healthcare system. However, as stated, the Petitioner has not identified any specific error in the Director's decision that the evidence in the record and cited in the personal plan is insufficient to establish she is well positioned to advance her endeavor.

The Petitioner asserts that her job offers, one of which she has accepted, evidence her progress towards achieving her endeavor. However, she has not described how her duties in her current position, or her other job offer are relevant to her proposed endeavor, merely listing them as illustrative of her meeting this factor.[5] The Petitioner also asserts that her job offers evidence interest or support from potential customer, users, investors or other relevant entities in her proposed endeavor but, again, she provides no explanation or details explaining how the offer from a recruiting agency or her current employment relates to an investment in her proposed endeavor.

In addition, on appeal, the Petitioner provides additional information on the Brazilian healthcare provider she worked for, explaining that working for the company allowed her to amass experience and knowledge in analyzing and collecting health data. She highlighted her current duties as a clinical database coordinator to further demonstrate her experience and includes a letter by her current employer, who petitioned on her behalf for H-1B nonimmigrant classification, and the approval notice for her H-1B classification. She notes that she is now currently licensed to practice as a registered nurse by the State of Illinois. Because the Petitioner must establish eligibility at the time of filing, new evidence related to her nursing degree and approval of her H-1B petition, both obtained after the filing of this petition in February 2023, cannot be considered. 8 C.F.R. § 103.2(b)(12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971). Moreover, the Petitioner does not explain how this additional information provided on appeal overcomes the Director's determination that the Petitioner has not established she gained recognition for significant contributions in the field, her work has influenced her field of endeavor, she has a leading, critical, or indispensable role in the endeavor or similar endeavors, or her expertise is recognized to be significantly above others in her field.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning her eligibility under the third prong of the Dhanasar framework. INS v. Bagamasbad, 429 U.S. at 25; Matter of L-A-C-, 26 I&N Dec. at 526 n.7.

IV. CONCLUSION

The Petitioner has not established that she is eligible for the underlying EB-2 classification as a member of the professions possessing an advanced degree. Further, she has not established that she merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.

[5] We note the Petitioner's other job offer was from a recruiting agency wanting to learn more about the Petitioner, with no additional information from the agency or the Petitioner as to why this company contacted her, what duties they would want her to perform, and how their job position would further the Petitioner's endeavor.