U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31318425

Date: JUN. 24, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a general internal medicine physician, seeks 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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

[1] We note the Petitioner indicates on appeal that neither he, nor counsel, received a copy of the Director's decision. However, U.S. Citizenship and Immigration Services (USCIS) records indicate that a copy of the decision was properly mailed to each, and neither was returned as "undeliverable."

interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

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

The Petitioner indicated that his proposed endeavor is "to work as an intensive care physician in Intensive Care Units ([ICUs]) in the U.S." In response to the Director's request for evidence (RFE), the Petitioner again indicated that he "intend[s] to work as an intensive care physician within American ICUs, located in clinics and hospitals, especially in medically underserved areas" and elaborated to include activities he will perform, such as "round of visits to all patients who are admitted to the ICU"; "meet with aides and nurses to discuss their perceptions"; "discuss the appropriate treatment for each patient with the other doctors"; "carry out medical prescription"; "perform medical procedures on patients"; "promote end-of-life care and maintenance of the potential organ donor"; and "lead the multidisciplinary team within the ICU as well as act as a link between the other specialists, nurses, assistants, and patients' families." Additionally, he asserted that he "intend[s] to work in medically underserved areas/populations in the State of Kansas" and has "received an invitation from [redacted] in [redacted] Kansas for an observation internship."

The Petitioner provided additional information about his proposed endeavor asserting its broad impact in the field. He indicated that in his position, he will "help reduce hospital expenditures by improving the efficiency of [treatment] resources" and reducing unnecessary costs by helping to increase hospital billing; "contribute to the shortage of experienced physicians in the United States, especially [] as an intensivist, a highly complex and important specialty that is directly related to patient survival and the quality of the team and the hospital"; "contribut[e] to the health and quality of life of populations in need of medical services"; "reduc[e] ICU mortality"; "contribut[e] to the increase in organ donation in the United States, helping to save the lives of American citizens"; "help reduce the risk of hospital-acquired infections," thus "reducing the number of sepsis deaths of Americans"; and "improve [the] hospitals' profit margins" by reducing hospital-acquired infections.

[2] *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).

The Petitioner provided articles[3] and a letter of support discussing Kansas' shortage of medical physicians, Kansas' medically underserved communities, and the necessity for foreign-trained and immigrant doctors to serve U.S. communities.

As stated above, the first *Dhanasar* prong looks to the proposed endeavor and requires that the Petitioner demonstrate that it has both substantial merit and national importance. *See id.* at 889. Regarding substantial merit, the endeavor's merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* 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." *See 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.*

The Director determined that the Petitioner established the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner reiterates that he "intends to work in a medically underserved community in the State of Kansas, which lacks physicians of his specialty and has been trying to take steps to attract immigrant doctors to vacant positions in the State." He further explains that his "proposed endeavor is to work with one of the most critical specialties in the medical field: the ICU," where severe shortages were identified during and after the COVID-19 pandemic. The Petitioner asserts that there are also government initiatives "promoting the health of Americans and ensuring that every American has access to affordable, quality health care is a priority for the federal government." He continues by reiterating the underserved communities in Kansas and how foreign-trained physicians are strategically sought to provide medical care in these communities. The Petitioner indicates that his proposed endeavor has national importance because it enhances societal welfare, promotes quality of life, and improves health outcomes for Americans; impacts a matter that a government entity has described as the subject of national initiatives; and has a broader impact on the field.

Upon de novo review, we agree with the Director that the Petitioner's endeavor has substantial merit but does not satisfy the national importance element of *Dhanasar*'s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

As a preliminary matter, we are not persuaded by the Petitioner's claim that his proposed endeavor has national importance due to the shortage of professionals in his field. A shortage of qualified professionals alone does not render the work of an individual physician nationally important under the *Dhanasar* precedent decision. *See id.* (looking to the "potential prospective impact" and "broader implications" of the proposed endeavor). Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages

[3] The Petitioner submitted various articles in the record. While we may not discuss every document submitted, we have reviewed and considered each one.

of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.[4]

Moreover, we recognize that there are communities within the United States that are medically underserved and would benefit from immigrant medical professionals. However, the Petitioner has not shown how his specific proposed endeavor, as an individual intensive care physician, has national implications within his particular field. Rather, it appears that he will be working at a hospital that will exclusively benefit from all of his efforts within his field and his proposed endeavor involves only individual patient care and treatment.

The Petitioner has not otherwise provided sufficient evidence documenting the "potential prospective impact" of his work. *See id.* While the Petitioner's proposed clinical duties have substantial merit, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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 his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's clinical work stands to sufficiently extend beyond his future patients to impact the field of ICU medicine more broadly at a level commensurate with national importance. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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.

[4] Additionally, in Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), Congress specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians in underserved areas. This exception is limited to physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12.