U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31207800

Date: JUN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the dental care field, 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 although the Petitioner established his eligibility for EB-2 classification, he did not demonstrate that 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 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 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.

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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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.[2]

II. ANALYSIS

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree and the record supports this conclusion.[3] Therefore, the primary issue on appeal is whether the Petitioner meets the requirements of the three prongs of the *Dhanasar* analytical framework and otherwise merits a national interest waiver as a matter of discretion.

In denying the petition, the Director addressed all three prongs of the *Dhanasar* framework. Although the Director found substantial merit in the proposed endeavor, and that the Petitioner is well-positioned to advance it, the Director concluded that the Petitioner did not establish that his proposed endeavor has national importance and that, on balance, waiving the job offer requirement would be beneficial to the United States.

On appeal, the Petitioner states:

> Considering the national importance prong, the Service claimed that the petitioner has not offered sufficient evidence to corroborate his claims that the proposed endeavor has national importance . . . For this reason, the Appellant was deprived of due process rights and a fair treatment under USCIS policy, the United States Constitution, and international treaties because the Service erroneously denied further analysis of NIW prongs. For doing so, the Service deprived the Appellant's fair chance to obtain his immigration benefit. As such, the officer erroneously assumed that the Appellant's proposed endeavor does not have substantial merit and is not nationally important. However, this is not the case.

The record does not support this assertion. As noted, the Director discussed all three *Dhanasar* prongs, found substantial merit in the proposed endeavor, and determined that the Petitioner had satisfied the second prong, concluding that the Petitioner was well-positioned to advance the proposed endeavor.

In addition, the Petitioner asserts that the Director did not objectively evaluate all the submitted evidence under the preponderance of the evidence standard. He maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion. For the reasons provided below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework. [4]

---

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] The record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree from an institution of higher education in the United States, and that he has at least five years of progressive, post-baccalaureate experience in his specialty. *See* 8 C.F.R. § 204.5(k)(3).

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner demonstrated that he worked as a partner and a head dental surgeon at various dental clinics in Brazil between 2001 and the time of filing the instant petition in August 2022. On Part 6 of the petition, the Petitioner identified his intended occupation as "CEO/entrepreneur in the dental care field," and provided the job description and Standard Occupational Classification (SOC) Code corresponding to chief executives.

In his Definitive Statement, submitted at the time of filing, the Petitioner indicated he intends to continue using his professional experience as a dental surgeon and clinic owner "to work as an Entrepreneur in the dental care field in the United States . . . . by developing and expanding my own clinic in the nation, [redacted] based in Utah. In addition, the proposed endeavor will provide "oral health services across underserved U.S. regions . . . to alleviate a nationwide health crisis - in which a vast portion of Americans do not have access to oral health services." Further, his proposed endeavor is projected to "reach a total headcount of 54 employees [and] compensated wages totaling $7.63 million by Year 5."

At the time of filing, the Petitioner also provided his business plan, in which he stated that his proposed endeavor will "hire several qualified U.S. dental healthcare and support professionals" and expand "to Opportunity Zones in neighboring Arizona and Colorado . . . . " The business plan included industry and market analyses, business strategies, financial forecasts and projections, and a description of the company's proposed service offerings and personnel. With respect to future staffing, the plan projects that the Petitioner's dental business would hire 54 employees in the first five years of operations, generate approximately $1.8 million in tax revenue by its fifth year, and achieve gross revenue of $1,387,800 in its first year and $9,714,600 by its fifth year.

In addition, the business plan indicated that the Petitioner will be "advising on some surgeries, clinic management, and client services," and providing training programs for "clinic staff and external professionals." The Petitioner did not claim or provide evidence that he is licensed to practice dentistry in the United States, but the business plan stated his intention to apply "for Certification in the State of Utah or Colorado." He did not provide a timeline for licensure or certification in his chosen specialty, instead indicating that he "will be assuming his duties as dental surgeon upon the opening of the fourth clinic (outside scope of this plan)."

In his response to the Director's request for evidence, the Petitioner emphasized his "expertise in the health care field" and "strong business management and entrepreneurial skills, allowing him to put forth field-wide standards that stimulate wellness, all while offering beneficial implications to patients, the health field at large, and U.S. business and economic prosperity."

B. Substantial Merit and National Importance

To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that his proposed endeavor has both substantial merit and national importance. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The record supports the Director's determination that the Petitioner's proposed endeavor, which aims to improve the oral health of U.S. patients, has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. Before the Director, the Petitioner provided published articles from professional and industry publications in support of his claim that he can satisfy the first prong of the *Dhanasar* analytical framework. The articles address the lack of affordable dental care in the United States, nationwide and regional labor shortages in the dental health profession, and inequalities in the availability of dental care across different demographic populations. This evidence provides support for the Petitioner's claim that his proposed work has substantial merit. However, in evaluating 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*.

While the Petitioner's statements reflect his intention to provide dental services to his clients, 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. Based on his business plan and statement, the Petitioner has not shown how the dental services he intends to provide to his clients would have broader implications in the dental field. The Petitioner emphasized that his clinic will "provide oral health services across underserved U.S. regions." He maintains that the endeavor will impact both the U.S. economy as well as other national and social interests by promoting oral healthcare across underserved regions for socially underserved people and will help to alleviate a lack of affordable dental care.

The record supports a determination that oral health is important to the overall health of the population and that the United States has many underserved communities that lack access to adequate dental care. However, the record does not establish that the work of one dentist or dental surgeon would have a nationally significant impact in this field. The record contains statistics intended to show that there is a shortage of dentists in the United States. But this shortage is likewise insufficient to demonstrate the national importance of any clinic or clinics that the Petitioner may establish and in which he may practice, pending completion of his future studies and licensure.

A shortage of qualified professionals alone does not render the work of an individual dentist nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any dental practice, but Congress did not provide a blanket exemption for dentists with respect to the job offer and labor certification requirement.[5] Foreign dentists are typically subject to this requirement and therefore the intrinsic benefits of operating a clinic are not presumptive grounds for waiving that requirement.

On appeal, the Petitioner maintains that his clinic or clinics will have substantial positive economic effects and references previously submitted supporting articles that emphasize the importance of

[5] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.

entrepreneurship on U.S. economic development and the critical contributions of immigrants to the U.S. economy. He maintains that the endeavor will progressively impact both the U.S. economy as well as other national and social interests by "generating jobs for U.S. workers in these underutilized areas, improving wages and working conditions for the U.S. workers, and helping the local community bring investments to the region."

We stated in *Dhanasar* 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 will be understood to have national importance." *Id.* at 890. However, the burden is on the Petitioner to establish that the economic effects of his proposed endeavor are "substantial." The job creation and revenue projections included in the Petitioner's business plan are not supported by details showing their basis or an explanation of how those projections will be realized. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. While the profit and loss statement indicates that the Petitioner's dental business has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar. Id.* at 890.

In addition, the Petitioner has not offered sufficient evidence identifying that the area where his company will operate is economically depressed; that his company would employ a significant population of workers in that area; or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Without this information, he has not adequately supported his claims regarding direct and indirect job creation and the expected direct and indirect economic benefits of operating one or more dental clinics. As such, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar.*

Further, the Petitioner has emphasized the importance of his industry or profession, his long career as a dental surgeon in Brazil, and his expected leadership role in his own future practice; however, these factors do not sufficiently establish the national importance of the proposed endeavor. Although the Petitioner's professional qualifications and prior employment are important and are documented in the record, the Petitioner's expertise acquired through his education, training, and employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner has also indicated in his statement his intent to deliver "workshops for students and fellow dental practitioners to enrich local dental health ecosystems." 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. The same reasoning applies here. The Petitioner has not shown that his future teaching activities will have a significant national impact on the practice of dentistry in the United States. He has not, for example, provided any detailed plan for reaching a wider audience through "workshops." As such, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his own proposed practice and its patients to

impact the oral health field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, we acknowledge that the Petitioner provided an expert opinion letter from an assistant professor of dentistry at the [redacted] In addressing the first prong of the *Dhanasar* framework, the author describes how Brazil's skilled "dental practitioners and the size of its market" have attracted investment from some of the world's biggest dental supply companies. He states that U.S. "Dental and Clinical institutions, operating or planning to operate in Brazil, would benefit from the expertise and skills of a Dentist and Orthodontist such as [the Petitioner] . . . . [who] has a[n] intimate knowledge and vast experience of the Brazilian Dental field." The professor concludes that the Petitioner's work would be in an area "of substantial merit and national importance for the United States."

The input of any professionals in the relevant field or industry is respected and valuable in assessing a claim of a national interest waiver. However, the expert opinion letter does not sufficiently demonstrate that the Petitioner's proposed endeavor has significant potential to employ U.S. workers or otherwise offers the "substantial positive economic effects" for our nation contemplated by *Dhanasar*. *Id.* at 890. For example, the professor has not offered sufficient evidence that the Petitioner's dental services through his company would employ a significant population of workers in an economically depressed area, or that his endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Further, although the professor indicates that there are shortages of dental health care professionals which the Petitioner's company will address, he has not suggested that the Petitioner's proposed endeavor would lessen the demand for dentists on a scale rising to the level of national importance.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework. Although the Director also concluded that the Petitioner had not established his eligibility under the third prong of the *Dhanasar* framework, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve those issues and will dismiss the appeal as a matter of discretion.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated his eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (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).