U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31491980

Date: JUN. 28, 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 a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 the Petitioner did not demonstrate that he merited a national interest waiver, as a matter of discretion, under the three-prong framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would have national importance.

The Petitioner described his proposed endeavor in response to a request for evidence as follows:

> Through his undertakings, [the Petitioner] will perform beyond the work of ordinary Nurses, as his endeavor will innovate the field of Nursing through a comprehensive and cross-functional approach to patient care, alongside improving the application of technical solutions and medical research to impact positively patient recovery and outcomes, besides reducing hospitalization costs and the bed occupancy rates, improving efficiency and operational management within companies.
>
> With the approval of his petition, [the Petitioner] will utilize his in-depth expertise in Intensive Care, Emergency Care, Home Care, and People Management to create treatment plans rooted in scientific reasoning, care standards, and professional guidelines. The Petitioner will focus on delivering intensive care and vigilant monitoring of patients. This care will persist until these patients reach total health and development, ready to return home.
>
> . . .
>
> His expertise in patient care, infection control, and therapeutic communication will enable him to help patients recover faster, prevent complications, and improve their quality of life. He will also educate and train healthcare professionals from various countries, creating a more skilled and internationally collaborative healthcare workforce.
>
> . . .
>
> The Petitioner will provide hands-on patient care, coordinating with physicians and other healthcare professionals to ensure that patients receive the highest quality of care possible.
>
> . . .

> In addition to his direct patient care responsibilities, the Petitioner will also contribute to healthcare research and policy development, helping to shape the future of healthcare in the United States.

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate his proposed endeavor would have national importance. On appeal, the Petitioner asserts that the Director's decision "contains numerous erroneous conclusions of both law and fact." However, he does not address specific conclusions reached by the Director in denying the petition, nor does he articulate any erroneous conclusion of law or statement of fact. This alone is grounds for summary dismissal. 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner does submit new evidence on appeal. However, since the Petitioner was put on notice and given a reasonable opportunity to provide this evidence previously, we are not obligated to consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Nevertheless, upon review of the entirety of the record, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his endeavor to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

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.* 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

On appeal, the Petitioner asserts that his previously submitted professional plan explains the potential prospective impact of his proposed endeavor to work as a nurse. He implies that he will pivot the focus of his proposed endeavor, stating, "I will use a different strategy, adding the proposal of a Researcher and Nurse Educator to raise the level of classification to national importance." The Petitioner emphasizes initiatives he undertook at the hospital where he worked in Brazil, such as recommending the placement of a "Do Not Disturb Zone" sign where nurses prepared medications to aid their focus and reduce errors. He discusses research papers he claims to have assisted writing, such as a study related to oral hygiene and pneumonia, as well as a paper outlining an outpatient

protocol for an oral anticoagulant that lists his name as one of dozens of contributors. The Petitioner points to these activities and letters of recommendation as evidence of the national importance of his endeavor, stating the following:

> [I]t is clear that I am a professional who always seeks to apply all the knowledge I have acquired within my work routine, and when this is validated, it ends up becoming a reality of national importance . . . . I have experience as a Nurse Educator, and the necessary qualities to develop work that can be recognized in my field of activity and [sic] nationally important.

The Petitioner describes how nurse educators "primarily teach prospective nursing professionals clinical skills, patient care methods, and best collaboration practices." The Petitioner explains his newly intended proposed endeavor as follows:

> I intend to work beyond the forms mentioned in the Professional Plan, also as a Nurse Educator, in hospital institutions, mainly in a *campus* hospital, because that [sic] provide and encourage researches [sic] and have educational development programs for the nursing team.
>
> As a Nurse Educator, **I will remain up-to-date on the best nursing** practices and methods, but I will also promote a continuous learning mindset among the nursing team. I will encourage nurses **to perpetually improve in their field**. It is expected that **I will be prepared for the future of nursing**, which will face the growing need for non-hospital healthcare, this being the main basis of healthcare in Brazil, focusing on disease prevention, thus **demonstrating once again a quality that differentiates me within the field of nursing**, an increasing development of new software to improve the healthcare experience, and the drain on effective collaboration in an increasingly digital workplace. **I will support practicing RNs through experiential learning opportunities to promote staff development.** [Emphasis in the original.]

The Petitioner initially described his proposed endeavor as that of a nurse performing a wide array of duties in a hospital and in patient homes. On appeal, he broadly describes his endeavor as that of a "Nurse Educator and Researcher" in a hospital, providing instruction to students, "[d]esigning and evaluating program curricula," and "[r]esearching related topics." In describing his "different strategy," he indicates that he will forgo the original portion of his endeavor involving hands-on patient care and focus on elements related to instruction and research, which were briefly referenced in his professional plan, thereby elevating his endeavor to the level of national importance.

However, it is unclear what specific endeavor the Petitioner intends to pursue. For instance, the Petitioner states that his proposed endeavor would "broadly enhance societal welfare" by affecting others' "well-being and health" as a "Critical Care Nurse, Researcher and Nurse Educator." The Petitioner alternately asserted that he would work in an intensive care unit, provide home healthcare, develop training for new nurses, prevent falls in healthcare facilities, and conduct research to generally lower healthcare costs and improve patient outcomes. The Petitioner described several ambitious undertakings, but given the wide-ranging scope of these activities, it appears unlikely that he would have a prospective national impact on either the field of nursing or the healthcare industry, particularly

since there is little objective evidence to substantiate the prospective impact of these many proposed endeavors.

For example, on appeal, the Petitioner describes several studies in which he claims involvement, such as one to "[d]evelop technical innovations to prevent falls in a hospital environment" and another to "[r]educe medication errors by 35% by the end of 2025." However, the record does not include evidence to corroborate these studies or any role the Petitioner played within them. The burden is on the Petitioner to provide evidence to support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Further, while the Petitioner implies his previous experience demonstrates that he would innovate nursing care in a manner that would broadly benefit patients and reduce healthcare costs, his assertions are vague and unsupported by objective evidence to clarify his endeavor and demonstrate its national importance. We also note that the Petitioner's emphasis on his previous experience relates not to the first prong of the *Dhanasar* framework, but to the second,[2] which discusses whether an individual is well-positioned to advance an endeavor.

The Petitioner's also asserts that he has established how his proposed endeavor would have substantial economic effects, indicating that he intends to develop a medical device requiring the hiring of individuals to produce it. The Petitioner provides a case report related to his description of the device discussing a patient's external cranioplasty treatment, but he provides no additional documentation related to his plan to develop a device that, he asserts, would serve to impact the industry or field more broadly, rising to the level of national importance. It is not clear how the Petitioner's employment as either a nurse, a nursing instructor, or a researcher in the United States would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Further, although the Petitioner links his proposed endeavor's national importance to an asserted shortage of nurses, we observe that shortages in a field are not alone sufficient to demonstrate that his endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. Although the Petitioner intended to train future nurses, he does not sufficiently explain or document how his individual training efforts would have the national impact on an asserted shortage of nurses. 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. Similarly, the Petitioner here has not properly detailed or documented how working as a nurse educator would impact his field more broadly. In addition, the importance of a nationwide issue does not confer national importance on the Petitioner's proposed endeavor to work in the field of nursing. Again, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.