U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37172763

Date: MAR. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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, 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 the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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 the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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*.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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. ANALYSIS

The Director determined that the Petitioner qualified for the underlying EB-2 classification as an advanced degree professional, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not established eligibility for a national interest wavier, and will dismiss the appeal.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The record reflects that the Petitioner has experience working as a clinical nurse specialist abroad and most recently as a caregiver within a senior living facility in the United States. The Petitioner intends to operate a home health care services company, [redacted] to provide individualized care to various patients, including seniors, pregnant women, adults, and children. She asserts that her company would be positioned to offer a personalized approach to fit each patient's needs, health conditions, and preferences in a home setting. In addition, she claims she will offer physical therapy, occupational therapy, and speech therapy. And she also asserted that her company would provide continuous training and education to its staff and patients to ensure they follow industry best practices. Some of the specific health care offerings will include assistance with childbirth and postpartum care as well as health monitoring and medication administration for elderly individuals. Accordingly, by responding to the aging population and accompanying healthcare needs, the Petitioner asserted that her company would address a critical and growing need in the healthcare market. In addition to medical care, the company will also assist with day-to-day activities, including maintaining personal hygiene, clothing, and recreational activities, as well as emotional support services. And the company also intends to offer specialized training to nursing homes and assisted living facilities.

In support of the endeavor, the Petitioner initially submitted a five-year business plan, which included a summary of the company's services, a market analysis, and five-year employment and financial projections. In addition to the business plan, the Petitioner submitted letters of recommendation, an expert opinion letter, and articles discussing the nursing field and shortage of nurses in the United States, as well as articles providing an overview of the home health care field and current trends within

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

the field. She also provided articles discussing the impact of immigrant entrepreneurs on the U.S. economy. In response to the Director's request for evidence (RFE), the Petitioner submitted a revised five-year business plan for her company along with additional articles discussing the home health care industry and immigrant entrepreneurs.[2]

Upon review, the Director concluded that, while the Petitioner established the substantial merit of her endeavor, the record did not demonstrate its national importance because the prospective impact of her endeavor would not sufficiently extend beyond her patients to lead to broader implications within the industry or field. Moreover, the Director concluded the Petitioner did not establish that her endeavor has significant potential to employ U.S. workers or otherwise result in substantial positive economic effects as contemplated in *Dhanasar*.

On appeal, the Petitioner generally disagrees with the Director's conclusions, asserting that the Director did not adequately consider the national importance of her proposed endeavor, and incorrectly concluded that the benefits of her endeavor would be limited to her prospective patients, "overlooking the critical and growing role that the home care industry plays in the United States' broader healthcare system." Notably, however, beyond generally disagreeing with the Director's conclusions, the Petitioner does not identify a legal error in the Director's decision. And, instead of addressing the Director's specific conclusions regarding the limited impact of her endeavor, she continues to reiterate the same claims previously made before the Director by relying primarily on the importance of the field. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). By presenting only general disagreement with the Director's conclusions, without identifying a specific erroneous conclusion of law or statement of fact, the Petitioner has failed to sufficiently identify a basis for her appeal. *See Matter of Valencia*, 19 I&N Dec 354, 354-55 (BIA 1986). Nevertheless, we have reviewed the record in its entirety, and for the reasons discussed below, we conclude that the Petitioner has not established her eligibility for a national interest waiver.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we conclude the record establishes the substantial merit of the Petitioner's endeavor, but does not demonstrate, by a preponderance of the evidence, that the Petitioner's proposed endeavor of operating a home health services company has national importance as contemplated under the *Dhanasar* analytical framework.

The Petitioner dedicates a significant portion of her appellate brief discussing the importance of the clinical nurse specialist role within the U.S. healthcare industry, and the vital role nurses play in the U.S. healthcare industry relating to patient care, preventative care, and post-surgical care. And the Petitioner discussed several statistics and data related to the benefits and impact of the home health

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

care field. Yet, in *Dhanasar*, we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. Accordingly, we "look for broader implications" resulting from the proposed endeavor, noting 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.

On appeal, the Petitioner contends that her company will result in broader implications to her field, because she will place a strong emphasis on training and professional development, will set industry standards, and she will develop training programs in nursing homes and assisted living facilities. Moreover, she asserts that her company's alignment with federal priorities, including home healthcare, and access to health care services in economically depressed regions establishes its national importance. Additionally, the Petitioner asserts that her company will result in substantial economic benefits, including the creation of 30 jobs by its fifth year of operation, as well as the generation of $115,905 in tax payments in that same time. However, the record does not support the Petitioner's assertions that her company will result in broader implications to the field, or otherwise result in substantial economic effects rising to the level of national importance as contemplated in *Dhanasar*. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Here, although the Petitioner claims on appeal that, by offering "personalized home care services, [her] company will not only impact local communities but also contribute to addressing nationwide challenges in the healthcare system," and will alleviate the burden on hospitals and nursing facilities, the record does not establish that her company will meaningfully impact the industry as claimed. While the Petitioner's statements reflect her intention to provide valuable services to her future patients, she has not provided sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. For example, she asserts that her company is committed to raising the standard of care in the industry by introducing innovative practices and relying on technological advancements, but she does not provide further explanation of *what* if any innovative practices or technological advancements she intends to introduce, and how they will be implemented in the industry such that they can be considered to extend beyond her company and individual patients. And, without this information, we are unable to determine whether her company's practices would indeed be analogous to the "improved manufacturing processes or medical advances" contemplated in *Dhanasar*. *Dhanasar* at 889. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Similarly, while the Petitioner claims that her endeavor is aligned with national initiatives to improve the accessibility and quality of healthcare, she has not shown how her endeavor would meaningfully impact these broad initiatives, beyond the immediate benefits to her prospective patients. The company's alignment these policies relates more to the substantial merit of her endeavor rather than its prospective impact. 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. *Dhanasar* at 893. Here too, while we agree with the Petitioner that her company may offer benefits to her patients, including allowing them to avoid hospitalizations, and access home health care in rural areas, the record does not show how her proposed endeavor stands to sufficiently extend beyond her patients to lead to "national or even global implications," or otherwise meaningfully impact these broad initiatives at a level commensurate with national importance. *Id.* at 889.

We also reviewed the testimonial evidence in the record, including the expert opinion letter and multiple letters of recommendation in the record and conclude they provide little additional probative value in establishing the national importance of the Petitioner's proposed endeavor. First, the expert opinion letter focuses primarily on the Petitioner's education and professional experience, as well as the importance of the field and public health. And, while Dr. T-K- states that the Petitioner's company "has significant potential to improve public health and quality of life," they do not provide specific examples regarding how the individual services the Petitioner will offer to her patients would meaningfully impact the field, or otherwise improve public health at a level commensurate with national importance. As discussed, while we recognize the growing importance of home health care, the expert opinion does not establish the endeavor would result in broader implications. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *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).

Similarly, while the letters of recommendation commend the Petitioner for her experience in the field, including her coordination of public health initiatives and excellent patient care, the letters do not establish the broader implications of her proposed endeavor. A petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor.

Additionally, we agree that the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise result in substantial positive economic effects. On appeal, she relies on her company's projected employment and tax payments to support the national importance of her endeavor. However, while any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated with credible and probative evidence how the economic activity directly resulting from her company and its operations would rise to the level of national importance contemplated in *Dhanasar*. First, the record contains inconsistent information pertaining to the Petitioner's employment and financial projects. In the Petitioner's first business plan, she indicated that, by the fifth year of operations, she anticipated generating annual revenue of $1,289,752 while employing 20 individuals in various roles. Subsequently, in her revised business plan submitted in response to the Director's RFE, the Petitioner indicated that, in that same

time, she anticipated generating $2,333,784 in revenue, and intended to employ 30 individuals[3]. The Petitioner did not address these changes, and beyond providing the costs of services, neither business plan provides sufficient explanation for the basis of these financial and employment projections. Yet, even if the endeavor's revenue and job creation projections were sufficiently explained and supported, they do not establish that her company would operate on a scale rising to the level of national importance contemplated in *Dhanasar*, nor has the Petitioner explained how her proposed employment numbers and revenue would impact her company's areas of intended operations.

And, while we recognize the Petitioner's claims that her company will be able to address the shortage of nurses and health care professionals by providing internships and apprenticeship programs, ongoing training, and attractive benefits packages, she has not explained to what extent these benefits, even if implemented, will meaningly address the claimed nationwide shortage on a broader level. Nor has the Petitioner explained how she intends to recruit eight registered nurses and nursing technicians as well as four certified nursing assistants given the stated shortage in the record, as the articles in the record indicate that there is a shortage of individuals to fill these roles, not a shortage of available positions.

For the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

[3] While the revised business plan indicated the Petitioner's plans to hire 30 employees, sections of the business plan remained unchanged and still referenced the claimed economic impact of employing 20 individuals.