U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36987628

Date: MAR. 6, 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 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. The Director determined that the Petitioner does not qualify as an individual of exceptional ability. The Director also concluded that the record did not establish that a waiver of the job offer requirement, and thus of a 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 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.

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;

[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 individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director found that the record does not establish the Petitioner qualifies as an individual of exceptional ability. The Director further concluded that the record satisfies the first *Dhanasar* prong but it does not establish the Petitioner is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong and that, on balance, waiving the job offer requirement would benefit the United States, as required by the third *Dhanasar* prong. *See id.* Because we determine that the record does not satisfy the three *Dhanasar* prongs, and because that issue is dispositive, we reserve our opinion regarding whether the Petitioner qualifies for second-preference immigrant classification as an individual of exceptional ability. *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).

The Petitioner described his proposed endeavor as a plan "to serve as a Physician-Scientist specializing in Epidemiology." The Petitioner indicated that he is "poised to offer my expertise to American hospitals, clinics, research institutions, laboratories, universities, and similar organizations, with an emphasis on top-tier research." He further stated that his "focus will be on data collection and analysis to address pressing health challenges while simultaneously providing health services to the U.S. citizenry." The Petitioner generally asserted that he "will work for American clinics, laboratories, universities, research institutes, or any similar companies in need of professionals specialized in Clinical Research and Epidemiology." The Petitioner also submitted generalized information regarding medical research, and evidence related to prior medical research he has conducted.

A. Substantial Merit and National Importance

The Director opined that "the [P]etitioner's prior research and proposed endeavor have substantial merit," as required in part by the first *Dhanasar* prong. The Director also determined, "the [P]etitioner's endeavor of further research has the potential and ability to have national or even global implications within the health, research and medical fields. The evidence of record thus establishes that the [P]etitioner's proposed endeavor has national importance," also required in part by the first *Dhanasar* prong. Therefore, the Director concluded that the record satisfies the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [individual] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant

potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

We withdraw the Director's determinations that the record establishes the proposed endeavor has national importance and, thus, that it satisfies the first *Dhanasar* prong, for the reasons discussed below.

As noted above, the focus for determining whether a proposed endeavor has national importance is not on the importance of the general industry, field, or profession in which an individual will work; rather, the focus is on the specific endeavor the individual proposes to undertake. *See id.* The Petitioner's professional plan, and the remainder of the record, provides information regarding his prior research activities and the field of medical research in general; however, it does not establish that the specific endeavor the Petitioner proposes to undertake may have the type of broader implications indicative of national importance contemplated by the first *Dhanasar* prong. For example, although the Petitioner broadly indicates that his "focus will be on data collection and analysis to address pressing health challenges," the record does not establish how the specific research the Petitioner will conduct, or the methodology he will utilize, may have national or even global implications within the field of medicine, medical research, or any other particular field, such as those resulting from certain improved manufacturing processes or medical advances. *See id.* As another example, although the Petitioner lists his potential employers generally as "clinics, laboratories, universities, research institutes, or any similar companies," neither his professional plan nor the remainder of the record specifies a particular employer or metropolitan area where he intends to work, or establishes how the specific endeavor the Petitioner proposes to undertake may have significant potential to employ U.S. workers or other substantial positive economic effects, particularly in an economically depressed area. *See id.*

Given the record's minimal information regarding what the Petitioner specifically intends to research, the employer(s) for whom he intends to work, the scope of the Petitioner's proposed research project(s), the anticipated duration of any particular research project, how the methodology of the proposed research project(s) may produce improved processes or advances, and other details regarding the specific endeavor he proposes to undertake, the record does not support the conclusion that the proposed endeavor has national importance. Therefore, it does not satisfy the first *Dhanasar* prong. *See id.*

B. Well-Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong contemplates whether the individual seeking second-preference immigrant classification is well-positioned to advance the proposed endeavor. To determine whether the individual is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge, and a record of success in related or similar efforts; a model or plan for future activities; any progress toward achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

As noted above, the Petitioner described his proposed endeavor as a plan "to serve as a Physician-Scientist specializing in Epidemiology." Therefore, the question here is whether the Petitioner is well-

positioned to serve as a physician-scientist specializing in epidemiology, rather than as an epidemiologist more generally. The record does not support the conclusion that the Petitioner is well-positioned to advance the proposed endeavor, for the reasons discussed below.

The distinction between a physician specializing in epidemiology and a more general epidemiologist is significant. The U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*), an authoritative source on duties and educational requirements for a wide variety of occupational categories, states that physicians "typically need either a Medical Doctor (M.D.) or a Doctor of Osteopathy (D.O.) degree" and, furthermore, "[a]ll states require physicians and surgeons to be licensed; requirements vary by state." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Physicians and Surgeons, https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm#tab-4 (last visited Mar. 6, 2025). In turn, the *Handbook* indicates that more general "[e]pidemiologists typically need at least a master's degree to enter the occupation. . . . The degree may be in a range of fields or specializations, although a master's degree in public health with an emphasis in epidemiology is common." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Epidemiologists, https://www.bls.gov/ooh/life-physical-and-social-science/epidemiologists.htm#tab-4 (last visited Mar. 6, 2025). In contrast to physicians, the *Handbook* does not indicate that more general epidemiologists must be licensed to practice medicine by the state in which they work. Thus, not all epidemiologists are physicians. Because the Petitioner stated that he intends to work as a physician specializing in epidemiology, rather than as a more general epidemiologist, the *Handbook* indicates he must acquire state licensure to be qualified to do so, rather than merely completing a master's degree program in public health as would otherwise be the case.

The record establishes that the [redacted] in Brazil, issued a degree in medicine to the Petitioner in April 2020, upon his completion of coursework between "2014/2" and "2020/1." More specifically, the record indicates that the [redacted] awarded the Petitioner a Titulo de Medico. The record contains an academic evaluation from GEO Credential Services that concludes the Petitioner's Titulo de Medico is "the U.S. equivalent of: Doctor of Medicine awarded by regionally accredited awarded [sic] in the United States." The Director reviewed information provided by the American Association of Collegiate Registrars and Admissions Officers Electronic Database for Global Education (EDGE), which the Director quotes as stating, "The Titulo de Medico represents attainment of a level of education comparable to a first professional degree in medicine in the United States." However, the EDGE information further reports, "Only professional authorities in the medical profession can determine whether [a Titulo de Medico] meets the standards for admission to professional practice in the United States."

As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The academic evaluation from GEO Credential Services does not indicate that it was performed by a professional authority in the medical profession; therefore, according to the EDGE information quoted by the Director, the academic evaluation cannot establish whether the Petitioner's Titulo de Medico degree meets the standards for admission to professional practice as a physician in the United States, beyond the issue of whether it is equivalent to an M.D. or D.O. degree from a qualifying U.S. university, discussed above. The record does not otherwise establish whether the Petitioner's Titulo de Medico degree meets the standards for admission to professional practice as a physician in the United States, particularly in the absence of a license to practice medicine issued by any particular U.S. state.

On appeal, the Petitioner references a Master of Public Health degree he earned from [redacted] in Florida after he filed the Form I-140, Immigrant Petition for Alien Workers, and a plan to "lecture about epidemiology . . . in 2024 in Ohio," also after he filed the Form I-140. However, the Petitioner acknowledges that "developments and achievements that took place after the priority date [are] not to be considered under the eligibility factors, as such [he does] not offer this fact as evidence of eligibility," apparently referencing 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish eligibility for the requested benefit at the time the petition is filed); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (providing that a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (providing that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements). On appeal, the Petitioner does not contest the Director's conclusion that the record does not establish his Titulo de Medico degree meets the state licensure standards for admission to professional practice as a physician in the United States, which the Petitioner specifically included in his description of the proposed endeavor, as opposed to working as a more general epidemiologist, nor does he otherwise establish he has obtained a license to practice medicine as a physician in any particular U.S. state.

We acknowledge that the Petitioner completed some of his master's degree coursework before he filed the Form I-140. However, because EDGE indicates the Petitioner's Titulo de Medico is "comparable to a first professional degree in medicine in the United States," the record does not establish how the Petitioner's coursework toward a master's degree in public health—as opposed to work toward acquiring a state license to practice medicine as a physician—is progress toward his stated plan to serve as a physician specializing in epidemiology (distinguishable from a more general epidemiologist), after he already acquired a professional degree in medicine. Instead, it appears to be duplicative.

The record does not otherwise establish that the Petitioner has made progress toward acquiring a license to practice medicine as a physician in any particular U.S. state, which presents a significant obstacle in his stated plan to serve as a physician specializing in epidemiology in the United States. *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Physicians and Surgeons, https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm#tab-4 (last visited Mar. 6, 2025). Significantly, the record does not establish the state in which the Petitioner intends to work, which raises questions regarding what the requirements for licensure would be in that unspecified state, and what progress the Petitioner must make to fulfill those unknown requirements. *See id.* The Petitioner references on appeal optional practical training (OPT) experience he has completed during his master's degree enrollment at an employer based in Florida. However, again, the record does not

establish that the Petitioner intends to pursue the proposed endeavor as a physician in Florida, nor does it establish that the Petitioner's OPT experience for that employer based in Florida was in the capacity as a physician. Therefore, the record does not establish how the Petitioner's OPT experience constitutes progress toward achieving his proposed endeavor of working as a physician specializing in epidemiology, as opposed to a more general epidemiologist, in some unspecified state.

We acknowledge that the record establishes that, before the Petitioner filed the Form I-140, he conducted medical research in connection with a COVID-19 vaccine in Brazil and he has published research, indicating that he has some skills, knowledge, and success in related or similar efforts. However, the record does not establish that the Petitioner has a model or plan for future activities indicative that he may be well-positioned to advance the proposed endeavor. As noted above, the Petitioner's professional plan, and the remainder of the record, provides information regarding his prior research activities and the field of medical research in general. However, neither the professional plan nor the remainder of the record provides details about the future activities he intends to pursue, such as what the Petitioner specifically intends to research, the employer(s) for whom he intends to work (beyond general statements about types of employers of medical researchers), the scope of the Petitioner's specific research projects, the anticipated duration of any particular research project, and the methodology of any proposed research project. Because the record does not establish—beyond broad generalities—what the Petitioner's future activities would entail, neither the professional plan nor the remainder of the record presents a sufficient model or plan for future activities indicative that he may be well-positioned to advance the proposed endeavor.

We note that the Petitioner references on appeal an unpublished AAO decision regarding an epidemiologist. However, this decision was not published as a precedent; therefore, it does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Moreover, as noted above, the Petitioner asserts that he intends to work as a physician specializing in epidemiology, not as a more general epidemiologist; therefore, our unpublished decision regarding an epidemiologist bears limited instructive or persuasive value for the issues in the Petitioner's benefit request.

Turning to another second *Dhanasar* prong factor, the Petitioner does not assert on appeal, and the record does not support the conclusion, that potential customers, users, investors, or other relevant entities or individuals are interested in the Petitioner's general proposal to conduct medical research as a physician specializing in epidemiology for unspecified "clinics, laboratories, universities, research institutes, or any similar companies." Considered as a whole, the record does not establish that the Petitioner is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and that he is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, both of which are dispositive; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong and, as noted above, whether the Petitioner qualifies for second-preference immigrant classification. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.