U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26374987

Date: MAR. 7, 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 and 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. 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3]

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[4], 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.

II. ANALYSIS

A. EB-2 Classification

The Petitioner was awarded a bachelor's degree in nursing from [redacted] The Petitioner submitted translated copies of her diploma, certificates, and transcripts, as well as an educational evaluation indicating she has earned the equivalent of a U.S. bachelor's degree in nursing. The Director determined that the degree and transcript is insufficient evidence. As noted above, the regulation states that eligibility as an advanced degree professional may be shown if a petitioner is a member of the professions with a bachelor's degree and five years of post-degree experience in their specialty. Although the Director did not consider this evidence in their evaluation of the Petitioner's eligibility as a member of the professions holding an advanced degree, the record includes letters from the Petitioner's former employers to indicate that she was employed as a full-time nurse for more than five years after completing her degree. We conclude that she has established her eligibility as a member of the professions holding an advanced degree, and thus for the EB-2 classification, and vacate the Director's decision in that regard.

B. National Interest Waiver

The Petitioner plans to work in the United States as a nurse to provide specialized care with a specific focus on intensive care, cardiopulmonary resuscitation (CPR), cardiology, cardiological postoperative,

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[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[3] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 USCIS Policy Manual, supra, at F.5(B)(2).
[4] *See also 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 to be discretionary in nature).

clinical evaluation, and interpretation of imaging tests. The record contains a professional plan from the Petitioner detailing her expertise in the field of nursing, including her 15 years of experience in nursing that she will use to "positively influence the US healthcare and quality of life of US individuals and society." Given the Petitioner's experience within these specialties, the Petitioner asserts that she will provide her services in hospitals, clinics, residential houses, or wherever there is a need to bring her nursing technique and skills which will impact the life and health of American citizens. The Petitioner also stated that her role as a nurse will enhance the health of individuals, lengthen life, and reduce the burdens of illness and disability in society. In addition, she stated her work indirectly generates new jobs since it allows for individuals to procure, obtain, and/or maintain employment due to good health. The Petitioner also stated that her expertise in nursing will help fill the shortage of nursing professionals in the United States and enable both hospitals and private entities to improve their patient care processes. The Petitioner also contends that, through her nursing positions in the U.S., she will optimize patient care solutions, reduce costs, increase productivity, enhance the flow of patients and treatments, and contribute toward the advance and optimization of the U.S. health care industry.

While the Director determined that the proposed endeavor has substantial merit, he concluded that the record did not establish that the proposed endeavor has national importance.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing specialized nursing services through her specific endeavor rather than the importance of nursing or the nursing industry or field. In *Dhanasar*, we 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.

In addition, the Petitioner repeatedly emphasizes her experience, skills, and knowledge. The Petitioner's experience and abilities in her field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a nurse rises to the level of national importance. In *Dhanasar*, we determined 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, the record does not show through supporting documentation how her specific nursing services stand to sufficiently extend beyond her prospective patients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. Although the Petitioner asserts that her plan to continue her

nursing career could potentially have an impact on the proper and intended operation of the entire healthcare system, alleviating a severe and growing staffing deficit in the field of nursing, she does not substantiate her claims. The healthcare system is vast; however, the record does not establish how the Petitioner's proposed endeavor to continue her individual nursing career, among all other nurses in the United States continuing their careers, may have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" contemplated by *Dhanasar*. *Id.* at 889-90. In turn, the record does not support the Petitioner's claim that her individual work as a nurse at one or more healthcare facilities will alleviate a severe and growing staffing deficit in the field of nursing.

Likewise, the record does not establish how the Petitioner's proposed endeavor to work as a nurse at one or more healthcare facility at some unspecified location(s), may have "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Although the Petitioner indicated that providing her services will indirectly generate new jobs since healthy individuals can continue to work, the Petitioner did not provide sufficient evidence to show how treating her specific patients will create new employment opportunities rather than allow individuals to continue working in the positions they already had prior to treatment. In addition, it is not clear how the treatment of her patients will lead to a "significant potential" to employ U.S. workers. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

The Petitioner's appeal also reiterates her claim that her endeavor is nationally important due to the shortage of nurses in the United States and provides materials documenting the need for more workers in this field. However, she has not established how her individual nursing activities will resolve this shortage or impact it on a level rising to national importance.[5] While we acknowledge that the nursing field is of great national importance, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prong. *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 the applicant is otherwise ineligible).

[5] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

III. CONCLUSION

As the Petitioner has not met the requisite first prong 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.