U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30115076

Date: MAR. 12, 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 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. 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.

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:

- 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.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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 her decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit, and we agree. Turning to the national importance of her endeavor, the Director concluded that the Petitioner did not establish that her proposed endeavor has national importance. While the record demonstrates that the Petitioner is an experienced nurse who provides a valuable benefit to her employer(s), co-workers, and patients, we agree with the Director.

On appeal, the Petitioner asserts that the Director erred in finding that she is not eligible for a national interest waiver. The Petitioner relies, in large part, on her over nine years of experience as a nurse to establish the national importance of her proposed endeavor. However, the Petitioner's expertise and record of success in previous positions 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, by a preponderance of the evidence, the national importance of her proposed work.

In addition, the Petitioner discusses the importance of nursing as a profession and her specialization in neonatology and pediatrics. However, while this may establish the merit of the endeavor, national importance is a separate consideration under the first *Dhanasar* prong. *Id.* at 889-90. She must demonstrate the national importance of her specific, proposed endeavor of providing specialized nursing services rather than the importance of the field of nursing. In *Dhanasar*, we explained 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 determined that the noncitizen's work as a science teacher had substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. Similarly, the Petitioner in this matter has not established that her endeavor will have an impact that extends beyond her future patients, co-workers, and employer(s) to the broader field of nursing or healthcare.

Moreover, the Petitioner states that her endeavor has national importance due to the shortage of nurses in the United States but has not provided evidence to demonstrate that her endeavor would meaningfully impact the shortage. Further, a nursing shortage in the United States does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor (DOL) through both the labor certification process and its designation of professional nurses as a Schedule A occupation. 20 C.F.R. §§ 656.5, 656.15. *See generally 6 USCIS Policy Manual* E.7(c), https://uscis.gov/policymanual. The Petitioner also states that her proposed endeavor will "ameliorate the physician shortage in the United States" because family nurse practitioners "are stepping up to fill the void," but she does not substantiate how her specific endeavor would reduce the physician shortage at a level commensurate with national importance.

While the Petitioner also asserts that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation, she does not provide evidence regarding the projected U.S. economic impact or job creation directly attributable to her

future work. Here, the record does not show benefits to the U.S. regional or national economy resulting from her nursing position that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, she has not demonstrated eligibility for 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 appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976). We also reserve a determination on the Petitioner's eligibility for the underlying immigrant classification.[2]

ORDER: The appeal is dismissed.

[2] The Petitioner initially claimed to qualify for EB-2 classification as a member of the professions holding an advanced degree and an individual of exceptional ability. However, the Director did not make a finding as to whether the Petitioner qualifies for the underlying EB-2 classification. On appeal, the Petitioner states that in the Director's request for evidence (RFE), she was found "eligible for the sought-after visa classification"; however, we do not find such a statement in the RFE.

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