U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30213051

Date: MAR. 19, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. Section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the analysis below.

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. Next, a petitioner 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. at 889, 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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

As previously indicated, the Director's decision did not offer a complete analysis or adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i).[2]

Despite concluding that the Petitioner did not establish eligibility for a national interest waiver, the Director determined that: 1) that the Petitioner's endeavor has substantial merit under the first prong of the *Dhanasar* framework, but did not meet the standard of national importance, 2) gave contradictory statements as to whether the Petitioner demonstrated that they were well positioned, and 3) found that the Petitioner did not meet the third prong. Additionally, the Director did not make a clear finding in the decision as to whether the Petitioner met the EB-2 standard. For the reasons discussed below, we will remand this matter to allow the Petitioner an opportunity to address these issues.

A. Member of the Professions Holding an Advanced Degree

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
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> (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

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[2] *See also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

(A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Alternatively, exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether the petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

First, we will address the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree.

In the Director's request for evidence (RFE), the Director stated that the Petitioner "established eligibility for the requested E21 classification and thus qualifies as a member of the professions holding an advanced degree." The Director based that determination on the Petitioner having submitted "academic transcripts from [the] [redacted] where he [sic] obtained a degree in Physical Therapy, and [a] master[']s degree in Orthopedic Physical Therapy."

We note that the Petitioner made no claim to eligibility for EB-2 classification based on having an advanced degree at any stage of her petition except for in her attorney's cover letter sent with the Form I-140, Immigrant Petition for Alien Workers. On ETA Form 9089, the Petitioner listed that she completed a bachelor's degree in August 2016, and a "lato sensu" graduate program in August 2018. The Petitioner submitted a "Bachelor of Physical Therapy" (Bacherela em Fisioterapi) from the [redacted] and a Certificate from the "Graduate Program in Functional Orthopedics with Empasis on Manual Therapy" (Pós-Graduação em Ortopedia Funcional com Ênfase em Terapia Manual) from [redacted] The Petitioner also submitted academic transcripts with translations from each institution.

According to the American Association of Collegiate Registrars and Admission Officers' (AACRAO) Electronic Database for Global Education (EDGE),[3] Brazilian credentials at the master's degree level

[3] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a nonprofit organization representing more than 12,500 admissions professionals in more than 40 countries); *see, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

include the "Mestrado Profissional" (Professional Master's Degree Program) and the "Título de Mestre/Grau de Mestre/Diploma de Mestrado" (Master's Degree Program). EDGE states that a "lato sensu/wide sense" graduate program is a program, "which lead[s] toward a professional certificate, not to graduate degrees; graduate credits may be awarded." While no credential evaluation was provided, the translation of the Petitioner's transcript from [redacted] notes that a certificate was registered as a result of the Petitioner completing the graduate program. From the evidence submitted, the Petitioner's certificate is not equivalent to a U.S. master's degree. The Petitioner does not claim to have a bachelor's degree and five years of progressive experience. She lists only one position on ETA Form 9089 for less than a two-year time period.

On page four of the cover letter, the Petitioner's attorney stated: "To demonstrate that [Petitioner] meets the requirements of a professional of Exceptional Ability, we are submitting the following documentation..." The letter goes on to list the eligibility criteria that the Petitioner asserts makes her eligible for EB-2 classification as a noncitizen of exceptional ability. The Director made no determination as to whether the Petitioner met the requirements for EB-2 classification as a noncitizen of exceptional ability. On remand, the Director should examine whether the Petitioner qualifies for EB-2 classification, including a determination of whether she has an advanced degree and an initial analysis of whether she meets exceptional ability. Additionally, the Director should consider the following.

B. Proposed Endeavor

The Petitioner's proposed endeavor, as initially stated in her Form I-140 submission, was "to continue her career in the United States in the high-growth industry of healthcare, specifically within the field of Physical Therapy." She further related that her "proposed endeavor in the United States is to continue my career as a Physical Therapist. I will focus my proposed endeavor in the specialty areas of Orthopedics and Traumatology treatment, preventative care, and education." Additionally, "[t]his will have a direct impact on the economics of individuals, households, and the U.S. economy as a whole, by reducing the burden of costs associated with orthopedic trauma." Finally, the Petitioner states: "I will offer quality, holistic health care that focuses on the individual as a whole, which includes patients' mental wellbeing, and on their individual needs, to help them reestablish function in their daily professional and personal lives." The Petitioner only provides undetailed explanations as to where she will carry out her proposed endeavor stating that she will "work with clinics, hospitals, and other health care facilities."

C. National Importance and Well Positioned

In determining whether a proposed endeavor has national importance, USCIS must focus on the Petitioner's particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889.[4] "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on

[4] We agree with the Director's conclusion that the Petitioner's proposed endeavor has substantial merit. A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director determined that the Petitioner's proposed endeavor had substantial merit.

only one geographic area of the United States. *Id.* at 889-90. "An 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.*

After the Director's request for additional evidence, the Director stated: "The evidence does not establish that the level of work she proposes to perform as a physical therapist will impact the field more broadly." The Director provided a nonexclusive list of evidence that the Petitioner could submit to show that her proposed endeavor met *Dhanasar's* first prong. The list of potential items included a detailed description of the proposed endeavor and why it has national importance.

In her RFE response, the Petitioner submitted an updated statement, a letter from counsel, as well as supplemental industry reports and articles. The Petitioner argued that her proposed endeavor would "decrease costs associated with care, treatment, and poor mental health of patients suffering from orthopedic and traumatology conditions, illnesses, and injuries." Second, her endeavor would "alleviate a grave national shortage in Physical Therapists." Third, her endeavor would "help reduce and eliminate dependency on medication to treat pain caused by those injuries and thus serve as a key asset in the fight against the nation's devasting opioid epidemic." Finally, she claimed that her proposed endeavor would "substantially improve the lives of American patients by helping them regain self-confidence, mental stability, motivation to live, and participate [sic] in their regular activities."

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not submitted sufficient evidence to establish that her proposed endeavor would have national implications for the economy in the field of physical therapy or that her venture would impact the field more broadly. However, the Director's decision does not sufficiently explain how the evidence submitted fails to meet the standard of national importance, and the decision conflicts as to whether the Petitioner can show that she is well positioned. Accordingly, the decision does not allow the Petitioner an opportunity to prepare a meaningful appeal.

While it does not appear that the Petitioner has sufficiently demonstrated that her proposed endeavor would have enough breadth to merit national importance, the Director's decision did not apprise the Petitioner of the deficiencies in her claim. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake."). Under the section titled "3rd Prong – Beneficial to the United States to waive the job offer and labor certification requirements," the Director states that "the proposed endeavor has substantial merit, but not national importance…" Next, under a subheading labeled "National Importance," the decision suggests that the Director will discuss the first prong under the *Dhanasar* framework focusing on national importance. After the introductory paragraph, the decision omits any discussion of the Petitioner's evidence relating to national importance and skips ahead to the second prong of the *Dhanasar* framework that involves whether the Petitioner is well positioned to realize her proposed endeavor.

Further, the Director makes contradictory conclusions on whether the Petitioner met the second prong of the *Dhanasar* framework. First, the Director states that "[b]ased on the evidence currently in the record, the petitioner was found to be well positioned to advance the proposed endeavor." Then, under the section titled "3rd Prong – Beneficial to the United States to waive the job offer and labor certification requirements" and the subheading labeled "National Importance," the Director states the Petitioner "has

not shown that her experience and education alone are sufficient to establish that she is well positioned to advance the proposed endeavor." Finally, the Director states the "expert opinion letter was insufficient to demonstrate that the petitioner was well positioned to advance the proposed endeavor."

Thus, the Director's decision is unclear regarding the overall basis of denial and does not offer an accurate analysis of the evidence to allow the Petitioner a meaning opportunity to prepare an appeal. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Notwithstanding the deficiencies in the Director's decision and our withdrawal thereof, the evidence of record does not appear to demonstrate that the Petitioner met all three of the requirements of the analytical framework set forth in *Dhanasar,* which requires the Petitioner to demonstrate that: (1) her endeavor has substantial merit and national importance, (2) she is well-positioned to advance the endeavor, and (3) on balance, waiving the job offer requirement would benefit the United States. However, because the Director's decision does not provide sufficient analysis to allow the Petitioner to develop a meaningful appeal, we will remand the matter for entry of a new decision, and further consideration of whether the Petitioner can establish that she satisfies the criteria for an advanced degree professional.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.