U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30276003

Date: MAR. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dentist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act), section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner demonstrated her eligibility for EB-2 classification as an advanced degree professional, but 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 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, under section 203(b)(2) of the Act.

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:

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding 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

The Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree and the record supports that determination.[2] The remaining issue to be determined is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. In denying the petition, the Director determined that the Petitioner did not establish the national importance of her proposed endeavor, that she is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement.

For the reasons provided below, we conclude the Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework and therefore is not eligible for a national interest waiver as a matter of discretion. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

A. The Proposed Endeavor

The Petitioner established that she completed a university degree in dental surgery and a postgraduate specialization in oral health promotion and prevention in her native country of Brazil. The record reflects that she has approximately 12 years of experience as a practicing odontologist and dental surgeon.

In a professional plan submitted at the time of filing, the Petitioner stated she will continue using her "abilities as a dental surgeon to help meet the demand and ameliorate the shortage of dental health professionals in the country, provide highly skilled services to esteemed dental practices, provide educational lectures to empower other professionals in the field and improve the oral and overall health of U.S. citizens." She indicated that she would provide specialized oral care to patients of all ages, particularly in the areas of clinical care, dental surgery, and community education.

In response to the Director's request for evidence (RFE), the Petitioner asserted that her proposed endeavor is to offer her experience in oral surgery, general practice, pediatric dentistry, restorative dentistry, periodontics, and endodontics. She elaborated on the specific clinical procedures she would perform in each of these areas. The Petitioner also emphasized her intent to provide community education as well as training for other dentists and healthcare professionals, and stated she intends to "work in various areas of the healthcare industry, and perform roles in my own office, a national network of dental clinics, among others."

[2] Because the Director concluded the Petitioner qualifies for EB-2 classification as an advanced degree professional, they did not reach a determination on her alternate claim that she is eligible for classification as an individual of exceptional ability.

B. Substantial Merit and National Importance

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Director determined that the Petitioner had established her proposed endeavor's substantial merit, but not its national importance. Specifically, the Director concluded the Petitioner had not demonstrated that her undertaking stands to have broader implications in the field, has significant potential to employ U.S. workers, or has the potential for other substantial positive economic effects.

In her initial statement in support of the appeal, the Petitioner contested the Director's decision, asserting that the previously submitted evidence "certainly underscores the pivotal national implications" of her endeavor and establishes her eligibility for a national interest waiver. Specifically, the Petitioner stated that the services she will provide are "positioned to usher in transformative changes with expansive national and global implications in the Health sector" which will "bolster the economy directly and indirectly but also significantly enhance social welfare."

In her subsequent brief, the Petitioner does not further address the Director's decision. Rather, she states that the previously submitted evidence "may not have adequately showcased the full range of my expertise, skills and initiatives." She submits additional evidence, including a new "endeavor statement," stating that her proposed endeavor is to implement an "Innovative Oral Rehabilitation Program" that "aims to alter the oral health scene in the United States fundamentally." While she describes this project and its intended outcomes in the materials submitted in support of the appeal, the new information differs significantly from the endeavor she described previously.[3] As such, we cannot conclude that she simply seeks to clarify the information she provided in her previous professional plans. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Therefore, in evaluating whether the Petitioner met her burden to establish the national importance of her proposed endeavor, we will base our review on the evidence that was in the record before the Director.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. In support of her claim that she can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner cited articles in major media and other publications that address the lack of affordable dental care and dental insurance in the United States, nationwide and regional labor shortages in the dental health profession, inequalities in the availability of dental care across

[3] For example, the new endeavor statement indicates the Petitioner's work in the United States will focus on advancing the use of "overdentures with double connectors" used in the treatment of edentulism. She emphasizes that this "enhanced overdenture procedure . . . presents an innovative method to dental rehabilitation." Finally, she expresses that her "particular area of interest is utilizing double connectors to their full potential," noting that, by doing so, she would be "advancing dental science and establishing new benchmarks for prosthodontic brilliance" and would "spearhead a revolution in oral health care."

different demographic populations, and serious health outcomes that can be linked to a lack of adequate dental care.

This evidence provides support for the Petitioner's claim that her proposed work has substantial merit. However, in evaluating 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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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. Finally, we will consider evidence that a proposed endeavor has the potential to broadly enhance societal welfare, and whether it would impact a matter that is the subject of national government initiatives.

The Petitioner has made general claims regarding the potential positive economic effects of her endeavor. Some of these claims emphasize the economic importance of the dental healthcare industry. For example, in response to the RFE, the Petitioner emphasized that the dental services market generated $136.4 billion in 2021 and accounted for more than two million jobs nationwide. She also cited statistics estimating that the direct and indirect economic impact of a single dental office exceeds $1.7 million. While the revenue generated by the dental healthcare industry may be important to the U.S. economy, she must still demonstrate that the potential positive effects of her specific endeavor will be "substantial."

The Petitioner further asserts that her work will have "ripple effects on the economy" by positively impacting the employment prospects of patients, reducing health care costs and productivity losses stemming from poor oral health, stimulating the local economy, increasing tax revenues, maximizing productivity in dental and U.S. healthcare practices, generating jobs, and expanding the qualified workforce in her field. The record also contains broad statements that the Petitioner's endeavor "creates the opportunity to raise the standard of living in the United States and the world" and will be a "key factor in creating a healthy economy." However, she has not demonstrated how her proposed endeavor to work as a dentist has the significant potential to employ U.S. workers or stated that she will work in an economically depressed area. In fact, the record does not contain information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's future work beyond providing revenue and employment statistics for the Petitioner's industry as a whole. Absent information related to the Petitioner's specific endeavor, the record does not show that the benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. The Petitioner does not offer an evidentiary basis for her assertion that her endeavor would potentially "raise the standard of living" throughout the United States.

We have also considered whether the Petitioner established that her proposed work involving oral health would impact an area that is the subject of national government initiatives. The record contains references to the Centers for Disease Control (CDC) National Call to Action to Promote Oral Health. The submitted information about this and other government initiatives help show the substantial merit

of the Petitioner's proposed endeavor. However, the fact that a petitioner is qualified for and may accept a position in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. The Petitioner must still demonstrate the potential prospective impact of her proposed work and how it impacts those national initiatives.

Further, while the Petitioner generally states that improved oral health can improve the quality of life for individuals, the record does not provide adequate support for a determination that her specific proposed endeavor has the potential to broadly enhance societal welfare, rather than the welfare of the individual patients she treats. The record supports a determination that oral health is important to the overall health of the population; however, it does not establish that the work of one dentist would have sufficiently broad impacts on the oral health and general well-being of the larger population.

The record also contains statistics citing an increasing demand for dental health professionals in the United States and a shortage of qualified individuals to meet this demand. However, this shortage is likewise insufficient to demonstrate the national importance of the Petitioner's proposed endeavor to practice as a dentist in the United States. A shortage of qualified professionals alone does not render the work of an individual dentist nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any dental practice, but Congress did not provide a blanket exemption for dentists with respect to the job offer and labor certification requirement.[4] Foreign dentists are typically subject to this requirement and therefore the intrinsic benefits of operating a dental practice are not presumptive grounds for waiving that requirement. Further, the Petitioner has not shown that her employment as a dentist would have a significant impact on any talent shortage in the field.

The Petitioner also indicates that her work will advance her field, noting that she is qualified to provide training and instruction to other dental professionals and will do so through activities such as lectures and conferences. 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. *Id.* at 893. While the Petitioner's plan to guide other dentistry professionals has substantial merit, she has not demonstrated that any instructional activities she may undertake would offer benefits that extend beyond her colleagues and trainees. Here, we agree with the Director that the Petitioner has not submitted sufficient evidence to establish what the broader implications of her work would be or that her work would extend beyond her practice and its patients to impact or advance the dental healthcare field in which she intends to operate. The Petitioner's claim that she is "positioned to usher in transformative changes with expansive national and global implications in the Health sector" is not adequately supported by the record.

The record includes letters of support from the Petitioner's industry colleagues attesting to her technical capabilities, experience, and commitment to providing excellent care to her patients. The Petitioner's skills, knowledge, and prior work in her field, however, relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.*

[4] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.

at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar's* first prong. The submitted recommendation letters, while highly complimentary of the Petitioner's professional skills and qualifications, do not offer insight into the national importance of her proposed endeavor to practice dentistry in the United States.

Finally, we agree with the Director's determination that the submitted expert opinion letters from two university professors are not persuasive in establishing the national importance of the Petitioner's proposed endeavor. The authors significantly focus on the importance of oral health, the size of the dental health services market, the growing demand for qualified health professionals, the talent shortage in the field, and the Beneficiary's prior experience and qualifications to work in the industry. While they indicate that the United States would benefit from the Petitioner's expertise and skills as a dentist, they do not sufficiently address the Petitioner's specific proposed endeavor, its prospective substantial economic impact, or any broader implications of the Petitioner's work in the field.

We observe that 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). Here, much of the content of the expert opinion letters lacked relevance and probative value with respect to the national importance of the Petitioner's proposed endeavor.

While the Petitioner's evidence shows how her proposed endeavor stands to positively impact her patients and her future employer, it does not demonstrate how the endeavor will have a potential prospective impact consistent with national importance. Accordingly, the Petitioner has not established that her proposed endeavor meets the first prong of the *Dhanasar* framework.

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve her appellate arguments concerning her eligibility under the remaining prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

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. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.