U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37434927

Date: MARCH 20, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an ear, nose and throat (ENT) physician and surgeon, 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 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, 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 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. 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

II. ANALYSIS

The Petitioner holds the foreign equivalent of a Doctor of Medicine degree and the Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

In his business plan, the Petitioner stated his proposed endeavor is to establish a network of clinics providing specialized rehabilitative services for individuals with speech, swallowing, and hearing disorders. The business plan states the clinics will also operate mobile health units which will provide diagnostic and treatment services, as well as conduct community outreach and education.

The Director determined the Petitioner established the substantial merit and national importance of his proposed endeavor, but did not meet the second and third *Dhanasar* prongs.

A. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether individuals are well positioned to advance their proposed endeavors, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director determined the Petitioner had not demonstrated a record of success in operating a business similar to his proposed endeavor, did not provide evidence of adequate financial funding for his proposed endeavor, and concluded that his citation record was insufficient to show the interest of others in his proposed endeavor. On appeal, the Petitioner asserts the Director erred and he submits additional evidence of his finances and citation record.

The record documents the Petitioner's education, skills, knowledge and record of success in efforts related to his proposed endeavor. The Petitioner holds a Doctor of Medicine degree and numerous medical professionals attested to his skills, knowledge and record of success. A-L-O-[2], a speech therapist and chief executive officer of a hearing clinic, praises the Petitioner's knowledge, skills and experience in successfully managing medical practice groups. R-R-F-, an ENT surgeon, commends the Petitioner's skills and knowledge, and praises him as "an able administrator" who expanded his two ENT practices and leads a specialized clinic. N-A-B-, a professor of otolaryngology, praises the

[2] We use initials to protect the privacy of the referenced individuals.

Petitioner's research and clinical experience, including his leadership of a specialized voice and swallowing clinic. F-M-G-, a professor of medicine, summarizes some of the Petitioner's influential publications and praises his exceptional skills in swallowing disorders and speech therapy. A-C-B-C-, a medical doctor and professor of craniomaxillofacial surgery, commends the Petitioner's expertise in craniomaxillofacial and robotic surgery and his "exceptional leadership in managing" his medical clinics. The Petitioner also submitted the articles of association and registration of his two medical clinics in Brazil.

The Petitioner's publications and citation record also demonstrate the interest of other medical researchers in his work. The Petitioner submitted evidence that he has published articles in medical journals and contributed chapters to medical textbooks. On appeal, the Petitioner submits evidence that six of his articles have been cited a total of 211 times. The Petitioner's business plan also provides a detailed plan for his proposed endeavor. The business plan specifies the services the clinics will provide, its staffing, and projections for their growth.

In sum, the relevant evidence demonstrates the Petitioner's education, skills, knowledge, record of success, plan for future activities, and the interest in his work of other medical professionals in his field. The Petitioner has established that he is well-positioned to advance his proposed endeavor and the Director's contrary determination is withdrawn.

B. Whether on Balance a Waiver is Beneficial

The third *Dhanasar* prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

The Director did not assess the Petitioner's eligibility under these factors, but instead determined the Petitioner did not meet the third *Dhanasar* prong because he did not establish a record of successful research, the significance of his proposed work to advance healthcare, and had a low output of published work. On appeal, the Petitioner asserts the Director erred. We agree that the record documents the Petitioner's significant publication and citation record and the national importance of his proposed endeavor.

The Petitioner's education and proposed endeavor in a science, technology, engineering, and math (STEM) field merit special consideration under United States Citizenship and Immigration Services (USCIS) Policy. USCIS recognizes the importance of progress in STEM fields and the essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. Accordingly, strong positive factors to consider when assessing the third *Dhanasar* prong include possession of an advanced STEM degree

and being well positioned to advance the proposed STEM endeavor of national importance. *Id.* These factors are present in the Petitioner's case.

However, the Petitioner has not established his eligibility under the factors identified in *Dhanasar.* The Petitioner asserts that "requiring labor certification would impede advancements in critical medical research that USCIS itself recognized as nationally important." The Petitioner claims his "unique combination of research and clinical leadership advances medical knowledge in ways that transcend standard employment relationships." The Petitioner cites no evidence to support this claim and the record shows the Petitioner has previously conducted research and operated medical clinics while employed as a medical professional.

The Petitioner further claims that his proposed endeavor encompasses "an entrepreneurial healthcare delivery model that cannot be adequately captured by the labor certification process." The Petitioner asserts his clinics "will contribute to U.S. healthcare delivery in ways that exceed what could be achieved by hiring a minimally qualified U.S. worker" The Petitioner does not articulate, however, how it would be impractical for the Petitioner to secure a job offer or obtain a labor certification. To the contrary, the record documents the Petitioner's extensive qualifications and experience and the interest of other medical professionals in his work.

The Petitioner has also not established that the national interest in his contributions is sufficiently urgent to warrant forgoing the labor certification process. While they praise the Petitioner's accomplishments and attest to his knowledge and skills, the authors of the Petitioner's support letters do not indicate that the national interest in the Petitioner's work is so urgent it could not wait for him to obtain a labor certification.

The relevant evidence does not show that it would be impractical for the Petitioner to obtain a job offer or labor certification and does not establish that the national interest in the Petitioner's contributions is sufficiently urgent to warrant forgoing the labor certification process. Considered together, these factors do not establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification in the Petitioner's case.

III. CONCLUSION

The Petitioner has established that he is an advanced degree professional eligible for EB-2 classification, and that he meets the first and second *Dhanasar* prongs. The Petitioner has not demonstrated that he meets the third *Dhanasar* prong and merits a waiver of the job offer requirement in the national interest.

ORDER: The appeal is dismissed.