U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30587803

Date: MAR. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *See* 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. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The Petitioner's parallel claim of exceptional ability is therefore moot. The issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner had established the substantial merit of her proposed endeavor and had satisfied the second prong of the *Dhanasar* national interest test, but had not established the endeavor's national importance or satisfied the third prong.

The Petitioner earned her first professional degree in dentistry in Brazil in 2010. Since then, she took additional coursework in the dental specialties of endodontics, dental prosthesis, and orthodontics. Since 2014, the Petitioner has operated her own dental clinic in Brazil. The Petitioner filed the petition in February 2023.

The Petitioner's initial discussion of her proposed endeavor focused on describing how she "will provide patient care and guidance." The Petitioner described various tasks performed by dentists in clinical practice, and stated that her "professional career will be developed with a focus on clinical practice," while also "identifying business needs and new opportunities in Dentistry" and "provid[ing] educational lectures to empower other professionals in the field."

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. 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.* at 889-890.

In a statement submitted with the petition, the Petitioner asserted that "her expertise will generate a significant positive economic impact to U.S. businesses and the National Interest." She asserted that, because she is able to practice several specialties within dentistry, her "endeavor will help to diminish the gap between the availability of general practitioners and dentists with other specializations." For example, the Petitioner cited statistics indicating that "[i]n 2019 there were only 3,739 licensed professionals in Prosthodontics for the entire country." The Petitioner contended that, given her "profound expertise in [a] scarce specialty . . . , she will be responsible to disseminate the best practices in the field, among her peers and assistants."

The Petitioner also asserted that her "proposed endeavor is a major economic contributor to the United States." The Petitioner provided general statistics about the total value of "[t]he U.S. dental services market," but did not establish the economic significance or impact of her intended practice. The

Petitioner also stated that dental practices create jobs, but she cited no specific figures to establish the extent of expected job creation from her proposed endeavor.

The Petitioner's initial description of her proposed endeavor included several general assertions without specific support, stating, for example: "As a Dentist . . . [the Petitioner] creates the opportunity to raise the standard of living for the United States and the world. Her work is a key factor in creating a healthy economy." The Petitioner cited information about the benefits of dentistry, but general background information about the wider field does not establish the national importance of one dental practice.

The Petitioner also stated she intends to "help the less privileged American communities who need Dental care," and "to develop and implement non-profit programs so that other professionals can work toward the same cause." The Petitioner did not provide any details about these programs, or establish that her practice would reach enough underprivileged or underserved patients to reach the level of national importance.

In a request for evidence (RFE), the Director stated that the Petitioner had made "assertions of national importance without evidence to support the claim," and that "the national importance of the field of dentistry . . . does not demonstrate the national importance of the specific proposed endeavor."

In response, the Petitioner stated that she "will perform beyond the work of ordinary Dentists," "providing excellence in all functional and aesthetic aspects of the teeth. This will impact the self-esteem, health, and productivity of American citizens." The Petitioner also asserted that, because of her unique experience, her proposed endeavor will "result[] in immeasurable contributions to the U.S. Dentistry sector, including national and even global implications, the significant potential to employ U.S. workers, enhancement of societal [sic] and national importance to the U.S. government." The Petitioner further claimed:

> She will also collaborate with local community organizations and academic institutions to establish a network of care and education that extends beyond her practice. Growth supported by her endeavor pays dividends for all U.S. citizens by reducing healthcare costs associated with untreated dental diseases, enhancing health literacy and productivity, and fostering improved social interactions among the aging population and children.

The Petitioner contended that her "work has palpable broader implications, as its results are widely disseminated to other professionals in the healthcare industry," but she did not explain how this dissemination would occur. Instead, the Petitioner stated: "by serving as a long standing successful Dentist, [the Petitioner] has assured her work would be noticed."

The Petitioner also stated that her work would result in "[i]ncreased access and affordability of health care," because "[b]y targeting economically distressed regions and breaking down barriers to dental healthcare, [the Petitioner] will establish a scalable and replicable model of care that can be applied across different geographies." The Petitioner asserted that she would also educate the public about dental health care and "contribute to local economies and community development" "[b]y creating employment opportunities, diversifying services, increasing patient base, and collaborating with local

organizations." The Petitioner listed several transformative goals, but did not provide details, corroborated by independent evidence, to show how her proposed endeavor would attain those goals.

The Petitioner also noted government efforts to promote oral health, and an expected increase in demand for new dentists. These factors do not show the national importance of one dental practice. The Petitioner did not establish how her proposed endeavor would increase the number of dentists so significantly as to reach the level of national importance. The labor certification process addresses labor shortages, and therefore such shortages are not, themselves, grounds for waiving that process.

The record shows that, in July 2023, after she received the RFE, the Petitioner wrote to the Florida Department of Health (FDOH), requesting "a letter or statement that [redacted] has a need for dentists." In response, an FDOH administrator with jurisdiction over three counties acknowledged the local shortage and provided a job announcement for a position with FDOH. The Petitioner submitted a copy of FDOH's job announcement, but she did not state whether or not she had applied for the position.

The Petitioner asserted that there is also a shortage of dental hygienists, arising partly from "retirement or unwillingness to work as dental hygienists in clinical settings." A new dental practice might create new dental hygienist positions to staff that practice, but the Petitioner did not explain how her proposed endeavor would increase the supply of dental hygienists to fill those positions.

The Director denied the petition, stating that the Petitioner's "intent to develop a model which could have national, regional, or global implications is insufficient to demonstrate the national importance of the proposed endeavor," because the Petitioner did not provide "specific information about the petitioner's healthcare model." The Director also concluded that the Petitioner did not "demonstrate how working as a dentist has national or even global implications," and had not "shown the proposed endeavor in this case stands to sufficiently extend beyond the individuals the petitioner would serve to impact the industry or field more broadly."

On appeal, the Petitioner states:

> Regarding the National Interest Waiver requirements, the Service concluded that Appellant's proposed endeavor has substantial merit but does not have national importance. However, the Service did not further analyze the prongs under Dhanasar simply because it would serve no meaningful purpose. The Appellant was deprived of due process rights and a fair treatment.

The record does not support this assertion. The Director discussed all three *Dhanasar* prongs, and determined that the Petitioner had satisfied the second prong, concluding that the Petitioner was well positioned to advance the proposed endeavor.

The Petitioner states that the Director "did not give due regard" to the Petitioner's professional plan and "the letter from [redacted] reporting the interest in her skills and that they would be glad to work with her in the county." The Petitioner cites a passage from the *USCIS Policy Manual*:

> [L]etters from an interested government agency or quasi-governmental entity could prove favorable for purposes of the first prong if, for example, they establish that the agency or entity has expertise in the proposed endeavor and that the proposed STEM endeavor promises to advance a critical and emerging technology or is otherwise important for purposes of maintaining the United States' technological prominence.

6 *USCIS Policy Manual* F.5(D)(3). The Petitioner states: "In the present case, the [redacted] office of FDOH] formally informed the [Petitioner] of their interest in her services." As discussed above, the communication from FDOH was in response to a request from the Petitioner. While FDOH advised the Petitioner of the job opening in response to the Petitioner's inquiry, the record does not show that FDOH actively recruited the Petitioner for the position, or that the Petitioner applied for that position. The email communication from FDOH does not establish that an interested government agency attested to the national importance of the Petitioner's proposed endeavor.

The Petitioner reproduces the FDOH email, which reads: [redacted] residents are in need of additional access to dental care. In fact, our health department is currently trying to hire a full-time Dentist." The message then provides a link to the job announcement discussed above. After reproducing the FDOH email, the Petitioner states: "In other words, the national importance of her work motivates social opportunities and prompts nourishment developments that improve the functionality of the nation's healthcare sector - all which respond to an evident national crisis." Notwithstanding the Petitioner's use of the phrase "in other words," the email from FDOH does not include any such evaluation of the Petitioner's work or its importance.

Regarding her professional plan, the Petitioner states that "the national importance of her work motivates social opportunities and prompts nourishment developments that improve the functionality of the nation's healthcare sector." She also asserts that the "proposed endeavor will impact more than just her served individuals, and instead has the potential to reach the families and affiliates of said individuals." The Petitioner does not elaborate, nor does she explain how the claimed impact of her work on the families and associates of her patients is sufficient to give national importance to the proposed endeavor.

In *Dhanasar*, we concluded that the petitioner had not established that his proposed teaching work would have an impact beyond the limited number of students that he would teach. *See id.* at 893. Similar reasoning appears to apply here. The Petitioner described in detail the types of dental procedures that she would perform, but her clinical practice would serve only a limited number of patients. The Petitioner also claimed that she would disseminate knowledge through lectures and other means, but did not explain how she would do so at a nationally significant level rather than reach a limited number of others in her field.

Apart from technical descriptions of certain procedures that she would perform in her own practice, the Petitioner has provided few details about what her proposed endeavor would entail and how it would result in the wider benefits and reforms that she has described. In the absence of such details, supported by independent documentary evidence, we conclude that the Petitioner has not met her burden of proof to establish the national importance of her proposed endeavor.

Detailed discussion of the remaining *Dhanasar* prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the second and third prongs.[2]

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).