U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30210923

Date: MAR. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental surgeon and entrepreneur, 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 that the record did not establish the Petitioner's eligibility for the requested national interest waiver. 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.

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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). If, however, a doctoral degree is customarily required by the profession, a noncitizen must have a United States doctorate or a foreign equivalent degree. *Id.*

Once 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.

II. ANALYSIS

A. National Interest Waiver

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. *Dhanasar*, 26 I&N Dec. at 889. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with Director's determination that the Petitioner's proposed endeavor, which aims to improve the oral health of U.S. patients, has substantial merit. Yet, the record does establish that the endeavor rises to the level of national importance as contemplated in *Dhanasar*.

The record reflects that the Petitioner is an accomplished dental surgeon in Brazil who managed his own dental practice prior to entering the United States. He intends to assume the position of oral and maxillofacial surgeon/entrepreneur to examine, diagnose, and treat diseases, injuries, and malformations of teeth and gums. More specifically, the Petitioner plans to develop and operate his own dental clinics to provide dental consultations and diagnostic services for a variety of patients. The Petitioner asserts that his proposed endeavor "to provide oral health services across underserved U.S. regions is of national importance to the country, as it seeks to alleviate a nationwide health crisis," and he will "impact the [d]ental [c]linic [s]ervices industry with a total payment of wages of 5.6 million dollars in a total of [five] years of operation. . . generating 35 direct jobs for U.S. workers." The Petitioner maintains he will "combat the rising crisis [in the dental industry] by 1) promoting oral hygiene; 2) treating those currently unable to receive necessary dental services; 3) creating jobs in the United States; and 4) training others in the field."

In support, the Petitioner provided a definitive statement, a five-year business plan, letters of recognition from prior patients attesting to his expertise in delivering care to his patients, letters from colleagues in the dental industry noting his participation on panel discussions at industry conferences, a copy of an e-book he authored on melasma, and an expert opinion letter. The record also contains articles and industry reports discussing the lack of affordable dental care in the United States, anticipated nationwide and regional labor shortages in the dental health profession, and serious health outcomes that can be linked to a lack of adequate dental care, along with articles detailing the economic importance of immigrants and entrepreneurs to the U.S. economy.[2]

[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).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

On appeal, the Petitioner generally asserts that the Director did not apply the correct burden of proof and failed to properly consider the evidence establishing his experience in the field, the potential impact of his proposed endeavor, and the shortage of dentists. Generally relying on the same arguments previously put forth, he maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we agree with Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

In disputing the Director's conclusion, the Petitioner continues to rely on the importance of oral health, and the dentistry field. *See Dhanasar*, 26 I&N Dec. at 889. 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." *Id.*

While the Petitioner contends he has previously presented to other dentists in the field at industry conferences, and published an e-book on the skin condition melasma, he noted that "upon my visa acceptance, I will focus on the growth and development of my American company, expanding its services, offerings, and economic capacities." The Petitioner has not indicated that he will continue to present and publish materials for the field, nor does the Petitioner's business plan indicate he will provide services related to melasma. Moreover, 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 his proposed work, and we conclude that he has not shown that the prospective impact of his proposed endeavor, however admirable, rises to the level of national importance.

The expert opinion letter and articles contained in the record rely on statistics intended to show that there is a shortage of dentists in the United States, but this shortage is likewise insufficient to demonstrate the national importance of any clinic or clinics that the Petitioner may eventually establish. A shortage of qualified professionals alone does not render the work of an individual dentist nationally important under the *Dhanasar* precedent decision (and the Petitioner has not provided evidence that his proposed endeavor would ameliorate the alleged U.S. shortage of dentists). 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.[3] Foreign dentists are typically subject to this requirement and therefore the intrinsic benefits of operating a clinic are not presumptive grounds for waiving that requirement.

Likewise, the Petitioner's additional claims that his clinic or clinics will have substantial positive economic effects are not persuasive. According to his business plan, the company will have a positive impact on the dental clinic services industry and the U.S. economy due to its anticipated revenue of $9.02 million in the first five years of operations, and $5.36 million in wages for 35 direct jobs in that same time. Notably, the Petitioner provides no explanation for the basis of these revenue projections, nor does he elaborate on how the proposed employment numbers will impact the area of intended operations. Even if the endeavor's revenue and job creation projections were more than conjecture, they nevertheless do not suggest that the endeavor would operate on a scale rising to the level of national importance. While any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the projected economic activity of his proposed endeavor rises to the level of national importance. Moreover, the Petitioner continues to assert that his endeavor is of national importance due to the shortage of qualified U.S. dentists, yet the business plan offers no explanation as to how, given the stated shortage, the Petitioner would be able to employ six dentists in the first five years of operations.

We note that the Petitioner chose the locations for his clinics due to their designation as Small Business Administration HUBZones, which is "linked to a National Initiative and, therefore, of National Importance." While the Petitioner indicated that he had plans to open operations in these locations, the record does not contain any evidence establishing the company's physical location. Therefore, the Petitioner has not offered sufficient evidence that his business will in fact be in a HUBZone, and the Petitioner's business plan states that he does not qualify[4] and does not intend to be eligible for the HUBZone program. More importantly, the record does not adequately establish that increased employment in these designated underutilized business zones would have positive economic effects commensurate with national importance. *Dhanasar*, 26 I&N Dec. at 890. So, the fact that the Petitioner's proposed endeavor may be in a HUBZone does not establish that the Petitioner's endeavor is of national importance.

The Petitioner has also indicated his intent to "train others in the field." While he does not elaborate further, 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. 26 I&N Dec. at 893. The same reasoning applies here. The Petitioner has not shown that his future training activities, if any, will have a significant national impact on the practice of dentistry in the United States. As such, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his own proposed practice and its patients to impact the oral health field or the U.S. economy more broadly at a level commensurate with national importance.

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[3] 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.

[4] There are several required qualifications to participate in the program, including that the business seeking to participate in the HUBZone program must be at least 51% owned by U.S. citizens, a community development corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

B. Eligibility for the Underlying Classification as an Advanced Degree Professional

While the Petition must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we also withdraw the Director's determination that the Petitioner is an advanced degree professional as the record does not support such a conclusion.

The Petitioner earned a bachelor of dentistry from [redacted] in 2004, and subsequently completed two *lato sensu* post graduate courses: one in family health in 2004, and another *lato sensu* specialization course in orofacial harmonization in 2021. Based on his foreign education, and the academic credentials evaluation from Morningside Evaluations equating the Petitioner's education to a doctor of dental surgery (DDS), the Director concluded that the Petitioner established eligibility for the underlying EB-2 classification as a member of the professions holding an advance degree. We disagree.

The regulatory definition of "advanced degree" states, in pertinent part:

> 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.*

8 C.F.R. § 204.5(k)(2) (emphasis added).

The Petitioner indicates that his proposed profession will be oral and maxillofacial surgeon/ entrepreneur, listing 29-1022 as the relevant SOC code for the proposed employment, and states in his business plan that he will be employed as a dental surgeon for his dental clinic. The Petitioner also provided printouts from Department of Labor resource O*NET, which indicates that at least a doctoral degree is customarily required for entry into the profession. The Department of Labor's Occupational Outlook Handbook also indicates that Dentists usually must have a DDS, or a doctor of medicine in dentistry (DMD).

The evaluator from Morningside Evaluations states that they relied on the Petitioner's bachelor of dentistry, along with his two *lato sensu* certificates to conclude that he had the foreign equivalent of a U.S. DDS; however, the regulation defining "advanced degree" requires an individual to have a single degree that is the "foreign equivalent" of a U.S. doctorate to qualify as an advanced degree professional. We also reviewed the American Association of Collegiate Registrars and Admissions Officers' Electronic Database for Global Education (EDGE)[5]. The database states that *lato sensu* programs are for professional development and specialization, and lead toward professional certificates instead of

[5] The EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge.

graduate degrees. Accordingly, the evaluation holds little probative value in this matter. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation.

The record does not establish that the Petitioner's bachelor of dentistry, nor his two *lato sensu* certificates are a "foreign equivalent degree" to a DDS.[6] As such, the Petitioner has not demonstrated that, at the time of filing the petition, he held the foreign equivalent degree of the doctoral degree required for the profession, and therefore, has not established that he is a member of the professions holding an advanced degree consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2). As the Petitioner has not shown that the proposed endeavor is of national importance under prong one of the *Dhanasar* analytical framework, it would serve no legal purpose to issue a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification. Accordingly, the Petitioner should be prepared to address this is in any future filings.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits 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 eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.

[6] We note that, according to EDGE, the title of dental surgeon degree is the equivalent of a level of education comparable to a first professional degree in dentistry in the United States.