U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31109339

Date: MAY 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 the record did not establish that the Petitioner qualified for a 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.

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." *Id.* 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:

- 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

Although the Director's decision did not discuss whether the Petitioner qualified for the underlying EB-2 classification, the request for evidence (RFE) included a determination that she qualified as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal 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 Petitioner stated that she intended to conduct remote follow-up with women in the United States who received COVID-19 vaccinations to detect adverse reactions. The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, she did not demonstrate that her proposed endeavor had national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework.

The first 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. *Dhanasar*, 26 I&N Dec. at 889.

In determining 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. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. 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.

[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 to be discretionary in nature).

The Petitioner initially submitted reports, articles, White House statements, a briefing transcript, and executive orders related to the COVID-19 pandemic, vaccines, the pharmaceutical industry, the economy, and immigration. While this material provides general information related to the impact of the pandemic, it does not provide insight into the Petitioner's plan to conduct pharmacotherapeutic follow-up to detect blood clots in women in a particular age group or show how this specific endeavor would have a potential prospective impact of national importance.

The record also includes letters of recommendation from the Petitioner's former work colleagues discussing her experience and emphasizing how her expertise will be of value to the nation. We note that evidence of the Petitioner's job experience and performance is generally not relevant to the national importance of an endeavor, as discussed in the first prong of *Matter of Dhanasar*, but to the second.[2] As such, the letters do not sufficiently demonstrate the national importance of the Petitioner's proposed endeavor.

The Petitioner initially provided the following explanation of her proposed endeavor:

> My proposal for the United States is to use all of my nearly 20 years of experience in the health industry as a Pharmaceutical Chemist to develop a pharmacotherapeutic follow-up for younger women, aged 40 to 60 years, post COVID-19 vaccine for 15 days to prevent and detect blood clots and possible outcomes such as death in the U.S. population.
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> . . .
>
> This study can help all women to avoid a fatal event of death from thrombosis if a strict daily follow-up through [monitoring] symptoms is carried out for 15 days after the application of the vaccine, either initial or booster, by means of a WhatsApp application that allows monitoring the symptoms related to the appearance of symptoms and directing the patient to [a] nearby medical center quickly.

In response to the RFE, the Petitioner provided the following in a statement:

> My proposed endeavor is to take advantage of my extensive experience in the health sector as a pharmaceutical chemist in pharmacotherapeutic monitoring to improve women's health in the United States through promoting pharmateherapeutic [sic] follow up of adult women in order to allow early detection or treamtent [sic] of vaccine related adverse events, prevent events that compromise womens [sic] health, and improve the U.S. healthcare system.
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> . . .

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

> My work will contribute to advancements in the field through sharing the results of my program with colleagues to nourish the pharmacovigilance information centers (universities and hospitals) through publications, symposia and congresses that support my advances in pharmacotherapy which will increase the applicability of the information they provide and the final objective of the reviews of the method will be none other than the patient and his [sic] health.

The Director concluded in the denial notice that, while the Petitioner had established the substantial merit of her proposed endeavor, she had not established its national importance. The Director determined the Petitioner did not show that the benefits of her proposed endeavor would extend beyond the individuals she would serve and impact the industry or field more broadly.

On appeal, the Petitioner contends that the Director abused her discretion and did not fully analyze the evidence of record. The Petitioner asserts that the submitted evidence established the national importance of her proposed endeavor and contends that the Director did not analyze all of the evidence or consider her endeavor's potential impact on the social welfare of the United States. We acknowledge that the Petitioner's plans to encourage the prevention and early treatment of health complications in women from COVID-19 vaccinations could have potential benefits. However, while the ultimate goal of a proposed endeavor may be to enhance societal welfare, we must consider the endeavor's significant potential to prospectively do so.[3]

Here, the Petitioner has not sufficiently explained how she would execute her proposed endeavor. The Petitioner has not discussed any logistics necessary in carrying out her endeavor. For example, she has not explained with sufficient detail how she would implement her project with pharmacies to recruit participants at a scale that would have a national impact. Likewise, she has not addressed the issue of how pharmacies would motivate a nationally significant number of women between the ages of forty and sixty to volunteer for the project and provide their medical information through an instant messaging application. The Petitioner also has not explained how she expects pharmacies to collect and organize patient data and to respond to individual participants. It is noteworthy that the Petitioner does not discuss or document any previous experience undertaking a similar project of any scale, nor does any of the evidence of record contemplate funding for the project or other motivating factors to incentivize the participation of pharmacies or female participants. The Petitioner's lack of experience in previously engaging in a study similar to that described and the absence of financial resources to realize the project are relevant to whether the Petitioner's proposed endeavor can credibly be undertaken and carried out successfully within a realistic timeframe such that it would benefit the United States on a national scale. These considerations are essential to an assessment of the proposed endeavor's potential prospective impact, and they do not reflect an endeavor that, more likely than not, would materialize on the expansive level envisioned by the Petitioner.

In addition, the Petitioner's broad claim that her "work will contribute to advancements in the field" is not corroborated by probative evidence sufficient to demonstrate that it is likely her project would have a positive prospective impact within the healthcare industry. Further, the Petitioner has not provided independent evidence or otherwise explained how her project would have a prospective national impact on an economy of any scale. A petitioner must support assertions with relevant,

[3] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the nation. She has not shown that her project stands to provide substantial economic benefits to any particular locality or to the United States overall. As such, the Petitioner has not demonstrated that the prospective benefits to the regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.