U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446257

Date: MAY. 06, 2024

Appeal of Nebraska 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, 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 Nebraska 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

The Director determined that the Petitioner qualifies as an advanced degree professional, but did not establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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

In the initial filing, the Petitioner listed his proposed profession as entrepreneur on the Form I-140, Immigrant Petition for Alien Workers, and stated he "plan[ned] to apply [his] expertise in medical knowledge to the ultimate benefit of the United States by focusing on expanding care across underserved population group," adding that he "intend[s] to work with [medically underserved population groups] spreading the knowledge regarding the safety of vaccines, the need to vaccinate, and the need to attend regular health check-ups." The Petitioner also indicated that he "intend[s] to volunteer his services as a health care professional to clinics providing health care" to these groups. In support of this endeavor, the Petitioner submitted a personal statement explaining that he was currently volunteering to support COVID-19 prevention, as well as serving as a mentor to medical assistants and medical technicians, concluding that his work "will affect vast spans of U[nited] S[tates] population groups via improved access to health care. . . [and] will clearly be of substantial merit and national importance."

The Director issued a request for evidence (RFE) in which they requested clarification as to the substantive nature of the Petitioner's proposed endeavor, explaining that, because the Petitioner "did

[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).

not provide a detailed description of [his] proposed undertaking or venture," the Director was unable to "meaningfully determine whether [the Petitioner's] proposed endeavor [satisfies] the *Dhanasar* framework."

In response to the RFE, the Petitioner submitted a new professional plan stating that he was currently working as a medical assistant instructor at the [redacted] training medical assistants, phlebotomy technicians, EKG technicians, and leading CPR courses, while also preparing to take the United States Medical Licensing Examination (USMLE) to obtain his medical license in the United States. According to this professional plan, the Petitioner planned "to provide a set of comprehensive integrative medical services to the American and immigrant population in the U[nited] S[tates] regardless of their health insurance status," noting that his "knowledge of medicine and ability to offer comprehensive integrative services [would allow] him to continue pursuing his endeavor as a doctor and generate a direct and positive impact on the well-being of the American people." The Petitioner's second professional plan provided details of the Petitioner's professional background and the importance of integrative medicine, explaining that "[i]ntegrative medicine is health care that uses all appropriate therapeutic approaches . . . [including] a combination of multiple therapies such as acupuncture, massage therapy, chiropractic care, behavioral therapy, homeopathy and energy work to provide thorough treatment in all areas." The Petitioner also explained that he "plans to offer his integrative medicine services to a large number of people, mainly those with precarious access to healthcare," noting that "[he] will take into account the integral improvement of the patient including psychological treatment, psychosocial support, re-education, and establishment of a new life plan." His professional plan also discussed primary care physicians in the United States and concluded that "through the provision of his integrative medical services, [he would] address the medical issues prevailing in the country, thus contributing to the public health of the American population." The Petitioner also submitted an expert opinion letter, which concluded that that the Petitioner's endeavor of providing his services to patients has both substantial merit and national importance, as he will enable his patients to live more fulfilling lives, thereby strengthening the U.S. economy and prosperity, and improving societal welfare.

The Director denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver because he did not meet the 3-prong *Dhanasar* framework. In regard to prong one, the Director concluded that the record did not demonstrate the Petitioner's proposed endeavor has substantial merit or national importance, as his professional plan seemed to only describe the work of a medical doctor, without providing sufficient details into the specific endeavor, and it was not clear whether he planned to work in a hospital, start his own clinic, or continue his work as an instructor. Without a specific explanation of the Petitioner's specific proposed endeavor, the Director concluded they could not meaningfully determine the substantial merit or national importance of the endeavor.

On appeal, the Petitioner generally asserts that the Director erred in their conclusion that he is not eligible for the requested national interest waiver. In doing so, the Petitioner relies on the same arguments he previously put forth in response to the Director's RFE, and in the professional plan, asserting that the record contains "sufficient evidence" to establish eligibility. The Petitioner also submits a new statement, indicating that he is now working as "a research assistant" with a "team in the internal medicine and surgery research department of the [redacted] [N]ew

[Y]ork," and reiterates that his professional plan establishes the impact and benefits of his endeavor.[2] Notably, the Petitioner does not address the Director's conclusion regarding the lack of clarity surrounding his specific endeavor.

In his statement submitted on appeal, the Petitioner indicates that his current position as a research assistant "demonstrate[es his] great interest . . . in acquiring the best knowledge about the population of the country and what are its main concerns and effects on health that they suffer."[3] But, the Petitioner does not clarify his actual endeavor beyond noting again his "firm conviction of implanting a service of comprehensive health where people (natives or immigrants) benefit from low-cost health service, without the need for health insurance." Given his proposed job title of entrepreneur listed in the underlying Form I-140, it remains unclear if the Petitioner plans to, for example, operate his own clinic, work at a hospital, or continue teaching.

Finally, although the Petitioner's statements in the record reflect his intention to generally provide services related to the medical field, we agree with the Director that the record does not sufficiently and consistently explain the Petitioner's specific endeavor to demonstrate the substantial merit and national importance of his proposed endeavor. The Petitioner asserts that he will enable his patients to become healthy and contributing members of society, resulting in the strengthening of the U.S. economy and prosperity. However, generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits

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[2] As the Petitioner's newly claimed research assistant role was not part of the record before the Director, we will not consider it for the first time on appeal. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak* 14 I&N Dec. 45, 49 (Comm'r 1971). The Petitioner cannot materially change the proposed endeavor on appeal to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

[3] While the Petitioner's expertise and record of success are considerations under *Dhanasar's* second prong, which "shifts the focus from the proposed endeavor to the foreign national," we note that the record contains inconsistent information relating to his current and past employment. *Id.* at 890. For example, beyond his own statement on appeal regarding his research position with [redacted] the Petitioner has not provided evidence corroborating his research position and the evidence contradicts this statement. In contrast to his contention that he is a research assistant with a "team in the internal medicine and surgery research department" and has "the opportunity to acquire the experience of working side by side with doctors of the[se] services (Internal Medicine/Surgery)," the letter from a representative of [redacted] dated just four months prior to the submission of this appeal, confirmed only that the Petitioner was "collaborating voluntarily since 2019 in different health campaigns in the application of primary prevention against hypertension, diabetes mellitus, and dyslipidemia in the population . . . and [is] currently preparing for the USMLE exams." Likewise, in the Petitioner's professional plan and expert opinion letter, it states that the Petitioner has been "working as a [m]edical [a]ssistant [i]nstructor at the [redacted]' since 2020. The letter submitted from a representative from [redacted], dated January 2023, indicates that the Petitioner has "work[ed] as a teacher in our institution. . . from Sept 2020 to present." Yet, in the initial filing of this petition (received May 24, 2021), the Petitioner provided an undated letter from a representative of [redacted] which confirms only that the Petitioner was "voluntarily giving weekly talks to people who are interested in taking [m]edical [a]ssistant course[s]." In addition, the Petitioner's professional background listed in his professional plans and on the U.S. Department of Labor ETA Form 750B, Statement of Qualifications of Alien, indicate that he was employed as a general doctor from January 2014 through January 2016, and from February 2016 through November 2016; however, the record also indicates the Petitioner did not complete his degree in medicine until June 2016, and the Petitioner has not provided an explanation as to how he was able to serve as a general doctor prior to the completion of his medical degree. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

adjudications). 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. Similarly, the Petitioner's general assertions of working in the health care field do not establish that the Petitioner's proposed endeavor stands to sufficiently extend beyond his potential patients to impact the medical field more broadly at a level commensurate with national importance. Further, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects.

For all the reasons discussed, the evidence does not establish the substantial merit or national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

Because the identified reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning eligibility under the *Dhanasar* framework, as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *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).

ORDER: The appeal is dismissed.