U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31032751

Date: MAY. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an audiologist, 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, the profession customarily requires a doctoral degree, 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. *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 address hearing loss in the United States, has substantial merit. However, upon de novo review, we also conclude that the record does not establish the Petitioner's proposed endeavor is of national importance.

The Petitioner intends to work as an audiologist in the United States to "provid[e her] expertise in audiology and perfor[m] services related to [her] field in the United States." In the initial filing, the Petitioner submitted a professional plan and statement indicating her plans to "work with hospitals, clinics, schools, and other institutions located in the U[nited] S[tates] in need of these specialized services to understand the demands and treatment protocols of people facing these issues, producing quality diagnostics and treatment plans to improve their overall health and meet patients' necessities fully." Noting her previous "work[] with electrophysiological assessment of hearing through Brainstem Auditory Evoked Potential, which enables the diagnosis of deafness in newborns," the Petitioner also stated, "with proper investment and research opportunities, I will be able to achieve further success and contribute to America by advancing scientific discoveries and breakthroughs in this industry, while also providing citizens with protocols that will aid them in hearing loss." While the professional plan does not clarify what "proper investment and research opportunities" the Petitioner planned to pursue, she indicated she planned "to write academic works" and translate her prior research to English "as a way of sharing this knowledge with professionals in this industry and advancing scientific findings." In support, the Petitioner also submitted an expert opinion letter, letters of recommendations from past patients as well as other professionals in the field, and articles and industry reports discussing audiologists, speech pathologists, hearing aid specialists, the importance of hearing health and newborn and infant hearing screening, demographics of users and nonusers of hearing aids, and the economic costs of unaddressed hearing loss.[2]

[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).

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

In response to the Director's request for evidence (RFE), the Petitioner reiterated that her "primary focus will be helping the American clinics, hospitals, and health professionals to address the deafness early diagnosis in children." In an updated and revised professional plan, the Petitioner outlined the wide array of services her endeavor would encompass, which include: diagnostic services, treatment protocols, research and development, educational workshops and training, community outreach, electrophysiological assessment, early intervention and advocacy, cross-cultural knowledge transfer, academic contributions, assessment of associated health issues,[3] collaboration with relevant organizations, and promotion of hearing health awareness. The Petitioner asserted her endeavor will have national implications in the field of audiology, because she could "explore innovative approaches to early detection and diagnosis of hearing loss in newborns and children, [which] could involve investigating new screening protocols, developing more sensitive diagnostic tools, or studying the effectiveness of early intervention programs." Notably, the professional plan did not provide detailed information relating to the specific research the Petitioner intended to pursue, nor did she indicate the amount of time she anticipated spending on the services outlined. The Petitioner also submitted a second expert opinion letter in support of her endeavor, which focused primarily on the audiology field and the impact of audiologists' work with patients.

The Director concluded that the record did not establish the national importance of the Petitioner's endeavor because the broader implications of her endeavor would not sufficiently extend beyond her prospective employers and/or patients in a manner that would rise to level of national importance. On appeal, the Petitioner generally asserts that the Director did not properly evaluate the record and impermissibly focused on whether the Petitioner's endeavor would result in broader implications to the audiology field, without considering the prospective impact of her endeavor to societal welfare and its implications on a matter that a United States government entity has determined is of national importance.

Upon de novo review, we agree that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. 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.

On appeal, the Petitioner continues to primarily rely on the importance of the audiology field, rather than establishing the broader implications of her specific endeavor, stating that her endeavor will "bolster societal welfare in the United States by virtue of its intrinsic nature." The Petitioner also asserts that, because her endeavor is "aligned with several U[nited] S[tates] significant initiatives such as the Americans with Disabilities Act, the individuals with Disabilities Education Act, the Health

[3] The Petitioner states that she will offer comprehensive patient care and "addres[s] health conditions associated with hearing loss, such as cardiovascular disease, diabetes, and cognitive decline," but does not elaborate on how she plans to address these medical conditions.

Insurance Portability and Accountability Act, and many other public health initiatives," this is sufficient to establish its national importance. While the stated alignment of her work with federal initiatives may speak to the significance of the field, it does not establish the specific endeavor's potential prospective impact. Likewise, the Petitioner argues that "hearing loss can have a profound impact on an individual's quality of life," and impact a child's educational and developmental outcomes, and therefore, the Petitioner's endeavor and work as an audiologist detecting hearing loss will aid in addressing these societal issues. The Petitioner also asserts that, given the details provided in her professional plan "it is only logical to infer," the proposed endeavor "will have potential prospective impact, achieving a similar level of national importance such as the one held by the field itself." However, in *Dhanasar* we stated that, in determining national importance, the relevant question is not the importance of the field, 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. As such, the Petitioner must demonstrate the national importance of her specific endeavor. Here the record does not support such a conclusion.

While we recognize that research in the field of audiology may result in broader implications to the field, the Petitioner has not consistently and clearly explained her plans to participate in research, nor does the record contain sufficient supporting evidence or information identifying how the Petitioner will allocate her time between direct audiology services and research. Such information is necessary to evaluate whether any research activities she may participate in would lead to broader implications commensurate with national importance. For example, on appeal the Petitioner states that she can drive advancements in biomedical engineering, leading to improving design, functionality and performance of hearing aids, cochlear implants, and other assistant devices, but she does not provide further explanation, nor does she explain how any potential future research would be utilized to improve designs to properly evaluate its impact. Speculation about research that the Petitioner might undertake in the future does not sufficiently describe a specific proposed endeavor to allow for analysis and assessment under the three-prong *Dhanasar* framework, and generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 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 adjudications).

Here, neither of the Petitioner's professional plans provide specific details relating to her prospective research plans or the "scientific discoveries and breakthroughs" she intends to research. Rather, they repeatedly indicate her intention to work as an audiologist in both plans.[4] Therefore, based on the Petitioner's statements in the record, it appears the primary focus of her endeavor is to provide direct services as an audiologist rather than conduct and publish her research. And, while the Petitioner's statements reflect her intention to provide critical services to prospective patients, and assist hospitals, clinics, schools, and other institutions to ensure early detection of hearing loss in her patients, she has not provided information and evidence to demonstrate the prospective impact of her direct audiologist services rises to the level of national importance to directly improve societal welfare. Establishing that the existence of hearing loss services and addressing hearing loss in individuals of all ages will

[4] While not relevant to the first prong of the *Dhanasar* framework, we also note that in response to the Director's RFE, the Petitioner submitted job solicitations from LinkedIn to establish she is well-positioned to advance her proposed endeavor. Notably, the potential opportunities involved providing direct audiology services to patients, rather than research, which also supports the conclusion that the Petitioner's primary endeavor will be to provide services as an audiologist, rather than research.

have a positive impact on the societal well-being is not enough to establish that the Petitioner's specific endeavor itself will result in an impact to societal welfare rising to the level of national importance. This is evident by the Petitioner's acknowledgement on appeal that her "presence in the United States, providing early diagnosis intervention and support, can definitely improve the quality of life of *these specific individuals.*" [emphasis added]

Likewise, the letters of support from the Petitioner's past patients, colleagues, and mentors do not provide insight into the prospective impact of the Petitioner's proposed endeavor. The letters recognize the Petitioner as a "very competent," professional who executes her "tasks with great dedication and exemplary performance, [providing] empathy [to] her patients, and great knowledge about how to carry out exams in [an] outpatient clinic," but they do not detail how the Petitioner's experience would impact the audiology field beyond her immediate patients, co-workers, and employers. The Petitioner's direct services in the audiology field could greatly improve the lives of her prospective clients, but the Petitioner has not established how these individualized benefits rise to the level of national importance. 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. Here too, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her potential patients to impact the audiology field or societal welfare more broadly at a level commensurate with national importance.

The expert opinion letters are similarly not persuasive in establishing the national importance of the Petitioner's proposed endeavor. They do not discuss broader implications that would be directly attributable to the Petitioner's specific endeavor, instead relying solely on the importance of the audiology field generally. For example, in one opinion, the expert repeatedly discusses the prospective impact of audiologists, and ultimately concludes that the United States "would greatly benefit from the expertise and skills of an experience audiologist such as [the Petitioner]," without elaborating on the Petitioner's specific endeavor. The letters also focus significantly on her past work; however, a petitioner's expertise and record of success in previous positions are considerations under *Dhanasar*'s second prong, which does not evaluate the prospective impact of an endeavor, but instead "shifts the focus from the proposed endeavor to the foreign national." *Id.* While we may use expert opinion letters submitted by the Petitioner as advisory testimony, we are responsible for making the final determination regarding eligibility for the benefit sought. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

On appeal, the Petitioner also asserts that, pursuant to guidance pertaining to individuals with advanced degrees in science, technology, engineering, and mathematics (STEM) fields, the record establishes the national importance of her endeavor because it will contribute to narrowing the STEM talent gap and develop scientific research in audiology. The Petitioner references two of our non-precedent cases involving endeavors which were "directly related to an area of STEM" to support her endeavor's national importance. However, the decisions referenced by the Petitioner were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered,

and applicable law and policy. Here, the Petitioner has not established that the facts in her case are analogous to those in the non-precedent decisions. Notably, in both of those decisions we explained that a Petitioner could not rely on an industry or profession to establish national importance, but rather the record must establish the prospective impact of their specific endeavor. In contrast to the record before us, the petitioners in the cited cases provided sufficient details relating to the prospective impact of their specific endeavor, including its direct implications to the field. Here, the Petitioner has not similarly demonstrated that her proposed endeavor offers broader implications in the field. The Petitioner also does not elaborate on how her employment as an audiologist will meaningfully address the STEM talent gap. A shortage of qualified professionals alone does not render the work of an individual audiologist nationally important under the *Dhanasar* precedent decision. Several of the Petitioner's claims of national importance could reasonably apply to any audiologist, but Congress did not provide a blanket exemption for this occupation with respect to the job offer and labor certification requirement.[5]

Furthermore, beyond discussing the economic impact of the field of audiology field in general, the Petitioner has not demonstrated that her intended work as an audiologist has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work (as opposed to the general economic impact of the industry), the record does not show that benefits to a regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

For the reasons stated above, we agree with the Director's conclusion that the Petitioner has not established her proposed endeavor is of national importance.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she 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.

[5] 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.