U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30214459

Date: MAY 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a home health aide, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, or, in the alternative, 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, 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. The Director concluded that the Petitioner did not establish she merits a discretionary waiver of the job offer requirement in the national interest. 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. Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (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.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] The remaining 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 while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that it is of national importance, as required by the first prong of the Dhanasar framework. The Director further found that while the Petitioner established she is well positioned to advance the proposed endeavor under the second prong of Dhanasar, she did not show that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 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." Id.

The Petitioner proposes to establish a home health aide business in [redacted] Florida, providing personal care, companion care, and palliative care to patients at their homes. The business plan explains that her business would "ensure a better quality of life" for patients by assisting with their care, such as hygiene, administration of diet and medication, rehabilitation exercises, and nursing consultations. The Petitioner indicates that her work will contribute to overcoming the shortage of knowledgeable and qualified home health aides in the healthcare industry. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish "her proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients to impact the industry or field more broadly." Additionally, the Director

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] As this matter is decided on the national interest waiver, we reserve the issue of whether the Petitioner meets the EB-2 classification.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

determined she did not show that her business "has the significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation." Accordingly, the Director found that the Petitioner did not establish her proposed endeavor is of national importance. Upon de novo review, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the evidence submitted meets the requirements under the Dhanasar framework. She argues that her proposed endeavor has national importance based on its potential economic and social benefits to the United States. She maintains that her proposed endeavor has national importance with potential prospective "economic impact to an entire community." (emphasis omitted). The first part of her appeal brief stresses her academic background and professional experience to show her business would "help the health of the American population and, therefore, contribute to the country's economy." She claims "[b]y being experienced in terms of early identification of other possible illnesses that might befall patients," her home health aide business "will ensure care, not only for pre-existing illnesses and struggles, but will also be able to provide preventive, quick, and effective care for any occurrence."

However, the Petitioner's reliance on her academic credentials and professional experience to establish the national importance of her proposed endeavor is misplaced. Her academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. Id. at 889.

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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of healthcare, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's work of establishing a home health aide business would impact the healthcare field more broadly such that it would rise to the level of national importance.

The Petitioner argues that her business would alleviate healthcare costs by focusing on preventative care and helping patients with the lower costs of home health aides. Her brief explains the importance of healthcare services and its contributions to the nation's economy because "healthy people are more productive" and spend less on healthcare costs. While improving the lives of its patients, her business would also improve the emotional health of their families and the economy. She argues her business plan provides detailed information of her plan and the viability of the business. With the petition, the Petitioner submitted her business plan which maintains that her proposed endeavor is of national importance based on her business assisting with the shortage of home healthcare agencies in the United States and its potential economic and social benefits. The business plan describes a market analysis of the expected growth of the home healthcare industry, the home healthcare industry's importance to the U.S. economy, the benefits of immigrant entrepreneurs on the U.S. economy, and several U.S.

government initiatives supporting healthcare, including Medicare, Medicaid, the Patient Protection and Affordable Care Act of 2010, and the Coronavirus Aid, Relief, and Economic Security Act. The plan also explains the Petitioner's professional experience; the business' commitment to "social responsibility"; and the business' projected marketing, personnel, and financial plans.

We acknowledge that a shortage of healthcare professionals demonstrates substantial merit of a proposed endeavor; however, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the field. The U.S. Department of Labor through the labor certification process directly addresses such shortages of qualified workers. The issue here is whether the Petitioner has established how her proposed endeavor would affect national healthcare professional employment levels or the U.S. economy more broadly consistent with national importance. And the Petitioner has not demonstrated how her proposed endeavor will address a shortage of qualified healthcare professionals or home health aides.

We also recognize the importance of the healthcare industry, home healthcare, and related careers, and the significant contributions from immigrant entrepreneurs in the United States; however, merely establishing a home healthcare aide business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. In Dhanasar, we 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.

In the business plan, the Petitioner maintains her business would have economic benefits to the United States by creating direct and indirect jobs for U.S. workers in an "economically depressed area" of [redacted] Florida; increasing revenue to the U.S. and local economies; and generating taxes for the United States and local communities. The business plan projects that in five years the business will hire eight or more employees, create 32.34 indirect jobs, and generate taxes of over a $220,000. However, the Petitioner has not provided corroborating evidence, in her business plan or elsewhere, to support her claims that her business' activities stand to provide substantial economic benefits to the United States and to economically depressed areas of Florida. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic and social benefits to the United States or local communities. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating eight direct jobs, 32.34 indirect jobs, and generating taxes of over $220,000 over a five-year period rises to the level of national importance.

The business plan also indicates that the Petitioner's business would support nationally important matters which are significant to U.S. national security because they are recognized by the U.S. National Science and Technology Council (NSTC) as critical and emerging technologies. She claims her business would impact fields on the NSTC's Critical and Emerging Technologies List Update because "all of them need home healthcare work . . . ." However, the Petitioner does not explain or

provide evidence showing how establishing a home health aide business is related to supporting critical and emerging technologies.

The Petitioner further argues on appeal that her proposed endeavor would have social benefits based on her business' work with minority populations, particularly Hispanic and Brazilian populations. She maintains that minority populations face healthcare barriers in the United States and that her business would provide "innovative solutions" to "uplift these communities" and contribute to "a more inclusive and equitable society." With her background, her dedication to these communities, and her "understanding of their unique needs and challenges," she claims her endeavor would "create avenues for skill development, education, and empowerment that directly address the existing inequities." However, the Petitioner has not provided evidence corroborating her claims. The Petitioner's general claims that her business would provide social benefits to minority populations has not been established through independent and objective evidence.

To further support the national importance of her endeavor, the Petitioner submitted an opinion from a professor for the nursing department at [redacted] in New York. The opinion mainly focuses on the importance of home healthcare, the need for home healthcare workers, and how the Petitioner's experience makes her qualified to teach and train other home health aides. The opinion explains the expected growth of the home healthcare industry because of the increase in the aging and disabled U.S. populations, and the importance of offering home care health services for patient health, reducing burdens on nursing homes and hospitals, cost reductions for the healthcare system, and the positive impacts of home healthcare on patients' families. While we acknowledge the importance of the home healthcare industry and related careers, establishing a home health aide business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the Petitioner's specific endeavor having a prospective impact in the field of home healthcare. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. See Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); 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). Moreover, stating that the Petitioner's work would support an important industry with a shortage of qualified workers is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

In the end, the Petitioner has not demonstrated that her proposed endeavor extends beyond her business and her future clients to impact the field, any other industries, or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as an owner of her proposed home health aide business offers innovations that contribute to advancements in the healthcare industry or otherwise has broader implications for the home healthcare field. The economic, social, and healthcare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' home health aide work and those claimed benefits. Without sufficient documentary evidence that her proposed work would impact the home healthcare industry more broadly or benefit the U.S. economy, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

Because the Petitioner has not sufficiently established the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. This basis for dismissal is dispositive of the Petitioner's appeal, and therefore, we decline to reach and hereby reserve the issues of the Petitioner's eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, she has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.