U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31074004

Date: MAY. 09, 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, 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 Petitioner did not establish that she qualifies for the requested benefit. 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.

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. 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.

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v. Garland,* 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

As explained by the Director, profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[2] 8 C.F.R. § 204.5(k)(3). The Director then determined that the position of medical assistant does not meet the definition of profession per section 101(a)(32) of the Act and 8 C.F.R. § 204.5(k)(2).

On appeal, the Petitioner's brief is limited to her eligibility for a national interest waiver under *Dhanasar*.[3] As she does not address the issue of profession, we deem this ground to be waived.[4] Therefore, we cannot conclude that she has overcome the Director's conclusion on this issue and the appeal must be dismissed on this basis alone.

As this issue is dispositive, we need not reach the Petitioner's appellate arguments regarding her qualification for a national interest waiver. Nonetheless, we have reviewed the record and evidence submitted on appeal and agree with the Director's conclusion that the Petitioner has not established that the broader implications of her proposed endeavor as a medical assistant would sufficiently rise to the level of national importance contemplated under *Dhanasar*. We recognize that the Petitioner has provided evidence establishing the importance of the medical field, and the work of medical assistants in general, yet 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." *Matter of Dhanasar*, 26 I&N Dec. 889. Likewise, 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 current and prospective employers and/or patients to impact the field more broadly at a level commensurate with national importance.

For the above reasons, 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 reasons for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility under the remaining *Dhanasar*'s 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.

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[2] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[3] We acknowledge that on page six of the Form I-290B, Notice of Appeal or Motion, the Petitioner asserts that the Director "erred in finding that the Petitioner is not an Alien with Advanced Degree." However, the Director did conclude she holds an advanced degree, but rather was not a member of the professions as the occupation of medical assistant does not require a United States baccalaureate degree or its foreign equivalent. Section 101(a)(32) of the Act; 8 CFR § 204.5(k)(2). By presenting only a generalized statement of error without explaining the specific aspects she considered to be incorrect, the Petitioner failed to identify the basis for contesting this requirement on appeal. *See Matter of Pougatchev*, 28 I&N Dec. 719, 729 (BIA 2023) (concluding issues that are not meaningfully appealed are waived).

[4] An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).