U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30910526

Date: May 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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 while the record did establish that the proposed endeavor was of substantial merit, the Petitioner did not demonstrate that the endeavor was nationally important, that the Petitioner was well-positioned to advance the proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. 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

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 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:

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

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.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner wrote in her definitive statement that she intends to open the [redacted] a primary care clinic and research institute, as her proposed endeavor.

The Director determined that the Petitioner's proposed endeavor was of substantial merit. Upon a de novo review of the record, we agree. Nevertheless, the evidence provided does not demonstrate that the endeavor is of national importance.

As a preliminary matter, the Petitioner asserts on appeal that in denying the petition, the Director "imposed novel substantive and evidentiary requirements." An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Although the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not specify, as required, how the Director erred or what factors in the decision were erroneous.

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.

Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.

The Petitioner argues on appeal that her proposed work will contribute to the "overall well-being and prosperity" of U.S. residents "by providing critical medical supplies and essential healthcare services."

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.[2] 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. 26 I&N Dec. at 893. The Petitioner's plans to open a primary care clinic similarly lack a broad impact on the medical field, as it would serve only individual patients. We observe that the evidence provided does not demonstrate otherwise. For example, the articles submitted concern primary care in the U.S., but they do not specifically address her proposed endeavor. The Petitioner's resume, degree, and educational certificates, speak to the Petitioner's education and work history. Finally, the incorporation documentation shows that the Petitioner has registered the business with the state and federal governments.[3] There is nothing in the evidence to demonstrate that the clinic's service of individual patients will impact the field more broadly in a way that implicates national importance.

Moreover, she has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have national importance. *Dhanasar*, 26 I&N Dec. at 890. Here, however, the business plan does not adequately support these projections of job and revenue creation.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of 21 employees in year five, with a total of $5,525,025 in wages paid out over five years. She also projected generating $900,727 in taxes over those initial five years. However, the plan does not explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

Furthermore, even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's appeal brief states that the proposed endeavor will contribute "to the broader federal efforts to stimulate local economies," and that the projected tax payments are "significant contributions to federal revenue." Yet the Petitioner did not provide documentation to support these statements that her clinic will result

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

[3] We note that in response to the request for evidence (RFE), the Petitioner submitted several investor and patient intent letters. However, all the letters were dated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

in substantial economic growth on the level of national importance. The record does not illustrate how creating 21 jobs and generating $900,727 in taxes over five years, as projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

We observe that the business plan mentions that in addition to providing primary care to patients, the clinic intends to develop research and clinical trials on women's health and family medicine. Yet the plan provides little further detail to demonstrate that this research would be of national importance. It states that the Petitioner intends to engage patients to volunteer in these trials, speaks generally about was a clinical trial is, and briefly details the aim of one particular trial (that the Petitioner does not have any apparent role in). The Petitioner provides no further evidence on the clinic's plans in regards to clinical trials or research. The record does not contain sufficient detail to establish that this function would be on par with national importance. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Accordingly, for the reasons given above, we conclude that the Petitioner has not established the national importance of the proposed endeavor, and therefore does not meet the first prong of the *Dhanasar* analytical framework. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that her proposed endeavor will sufficiently extend beyond her clientele to affect the region or nation more broadly. 26 I&N Dec. at 893. The Petitioner has not shown that benefits to the regional or national economy resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Thus, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

As 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 "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, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.