U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31074288

Date: MAY 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacist, seeks classification as a member of the professions holding an advanced degree. *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, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, and the record supports that determination. Accordingly, the remaining issue to be determined on appeal 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.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that he meets any of the three *Dhanasar* prongs. On appeal, the Petitioner maintains that the evidence was sufficient to demonstrate that he meets all three prongs under the *Dhanasar* framework and otherwise warrants a national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

In a letter of support, counsel for the Petitioner claimed that the Petitioner, a pharmaceutical chemist specializing in the manufacture of medicines at an industrial level, is a highly skilled professional by virtue of his academic qualifications in a STEM (science, technology, engineering, or mathematics) field. Counsel further asserted that the Petitioner "is qualified to act as a Stem Professional within the U.S. pharmaceutical and health sector, either as a consultant, or a researcher."

The Petitioner also submitted copies of his academic credentials, letters of support and recommendation, and industry articles and reports in support of the petition.

The Director issued a request for evidence (RFE), noting that the initial filing was not accompanied by a statement from the Petitioner or other documentation that articulated the nature of his proposed endeavor and therefore the record was insufficient to demonstrate that the endeavor had substantial merit or national importance. As a result, the Director requested a detailed description of the Petitioner's proposed endeavor in order to evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a professional plan stating that he had almost 22 years of experience in the pharmaceutical industry. Regarding his proposed endeavor, the Petitioner indicated that he intends to work as a pharmaceutical consultant, noting that he will "launch a pharmaceutical consulting firm that caters to medium and large firms in the industry." Specifically, the professional plan stated as follows:

> In the short term, [the Petitioner] intends to validate his professional title in the United States, work in the U.S. pharmaceutical industry to learn its systems and acquire new

> tools, and form research teams to develop master formulations or individualized medicines for chronic and neglected diseases, with a focus on low-income communities in collaboration with health professionals.
>
> [The Petitioner's] long-term goals for the venture include establishing a consulting firm that offers comprehensive services in the pharmaceutical industry, including research, production, quality management systems, product quality control, regulatory procedures, and innovative training methodologies for health personnel. The company would assist clients in preparing for inspections relating to Good Manufacturing Practices (GMP), Good Laboratory Practices, and Good Storage and Distribution Practices, affecting the whole pharmaceutical industry.

In addition, the Petitioner submitted an expert opinion letter and additional testimonial letters and industry articles in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. On appeal, the Petitioner provides a brief emphasizing his qualifications and asserting that the evidence of record establishes the national importance of the proposed endeavor.

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. 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. 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.

We agree with the Director that the Petitioner has not provided sufficient documentation explaining how the proposed endeavor is of national importance. While the Petitioner's statements and evidence reflect his intention to work in the U.S. pharmaceutical industry and ultimately establish his own pharmaceutical consulting company, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises 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. *See id.* at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his employers and clients to impact the pharmaceutical industry or the U.S. economy more broadly at a level commensurate with national importance.

We note the Petitioner's submission of articles, reports, and information pertaining to the U.S. pharmaceutical industry and the shortage of pharmaceutical workers.[2] In determining national importance, however, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The Petitioner must demonstrate the national importance of his specific, proposed endeavor of providing pharmaceutical consulting services rather than the importance of the pharmaceutical industry. While we note that the findings in the publications support the Director's determination that the proposed endeavor has substantial merit, they do not establish that the endeavor has national importance.

Throughout the record, the Petitioner points to his education, skills, knowledge, and record of success in his field. The Petitioner also provided several letters of support that discuss his experience in the field of pharmacy. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *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 his work.

The Petitioner submitted letters of support that speak to his character and his talents in the field.[3] For example, a letter from [redacted] pharmacist and professor of pharmacy at the [redacted] speaks constructively of his work supervising students, advising professionals, and implementing new manufacturing techniques during his time as a student at the university. A letter from [redacted] a quality control specialist and former coworker, speaks of the Petitioner's professional competence as a pharmaceutical chemist and recommends him for the requested classification. A letter from [redacted] general manager of [redacted] favorably recounts the Petitioner's professionalism during his employment with her company in 2016. [redacted] an ophthalmologist and surgeon, speaks highly of the Petitioner's abilities in medicine development, and recalls how the Petitioner assisted him "in providing solutions to special medical prescriptions that are not available under traditional pharmaceutical forms."

Although the writers praise the Petitioner's achievements and abilities as a pharmacist, none of the authors discuss the Petitioner's specific proposed endeavor. Instead, the authors primarily focus on the Petitioner's character, skills, and past professional accomplishments. Neither the letters nor any other evidence within the record provide insight into how the Petitioner's endeavor to provide pharmaceutical consulting services will positively impact the region or the industry beyond his employers or clients. Again, 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." *Id.*

[2] It is important to note that the shortage of pharmacists and pharmaceutical workers in the United States does not render the Petitioner's potential employment nationally important under the *Dhanasar* framework. In fact, such shortage of qualified workers is directly addressed by the U.S. Department of Labor (DOL) through the labor certification process.
[3] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner also provided an expert opinion letter from an assistant professor of medical education at [redacted] who opines that the Petitioner meets the requirements of the *Dhanasar* framework. The professor discusses aspects of the Petitioner's occupation and provides this generalized information about his endeavor:

> [The Petitioner's] proposed endeavor of providing his expert knowledge and skills in the pharmaceutical industry to clients in the U.S. has both substantial merit and national importance in the healthcare industry. Generally, pharmacists prepare medications by reviewing and interpreting physician orders and detecting therapeutic incompatibilities.

The analysis in the professor's letter is not specific to the Petitioner's actual endeavor. Instead, he states that the Petitioner qualifies for *Dhanasar's* first prong because "[t]he United States would greatly benefit from the expertise and skills of an experienced pharmaceutical consultant such as [the Petitioner], who has extensive knowledge and expertise in the healthcare sector." As a matter of discretion, we may use expert opinion letters submitted by a petitioner as advisory testimony. However, USCIS is responsible for making the final determination regarding eligibility for the benefit sought. Where an opinion letter is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Here, the analysis offered in the professor's letter is largely limited to general observations about the Petitioner's qualifications and the occupation and industry in which he will work and does not offer an analytical roadmap that lays out the basis for the opinion that the Petitioner meets *Dhanasar's* first prong. We conclude the opinion letter provided lends little probative value to the matter here. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner's professional plan includes an overview of the pharmaceutical industry and indicates that after validating his professional title and gaining experience as a pharmacist in the United States, he intends to open his own pharmaceutical consulting firm. The professional plan, however, is devoid of a timeline for opening his company and does not document how his proposed activities would constitute an advancement for the pharmaceutical industry. Moreover, while the plan contains a general proposal for his future work in the field of pharmaceutical consulting and claims that the endeavor "more likely than not" will create job opportunities in the field, it does not demonstrate that his proposed endeavor's future staffing and business activity stands to provide substantial economic benefits to South Florida or the United States. Further, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890. In addition, the Petitioner has not offered sufficient evidence that he would employ a significant population of workers or that his endeavor would offer the specific region or its population a substantial economic benefit through employment levels or business activity. Without relevant, probative, and credible documentation of the specific impact the endeavor proposes to have on its field, we cannot find that this impact will be nationally important. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

We note the Petitioner's reference to our non-precedent decision concerning a national interest waiver for a self-employed individual intending to open a consulting firm. This decision was not published as a precedent and therefore does 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. Moreover, the Petitioner has not provided evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision.

We recognize the value of pharmaceutical consulting; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. We conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his employers or clientele to impact the pharmaceutical industry or the U.S. economy more broadly at a level commensurate with national importance, as his evidence and statements are not sufficient to demonstrate his endeavor has the potential to provide his claimed economic and medical benefits to the United States. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.