U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31141527

Date: MAY. 28, 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, 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).

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

A. National Interest Waiver

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the Petitioner's proposed endeavor, aiming to provide home health care to U.S. patients, has substantial merit. *Id.* However, while the Petitioner established that the proposed endeavor has substantial merit, the record does not show it has national importance.

The Petitioner intended to work as a home health aide in the United States. In her initial professional plan, she stated her intent to "continue [her] career as a home health aide," and "apply for a job in the United States," adding that, "due to [her] experience as a nurse, [she has] the skills and competence to work directly at the patient's home and/or integrate health teams." In response to the Director's request for evidence requesting additional information regarding her proposed endeavor, the Petitioner submitted a new professional plan elaborating on her intention to "provide [her] specialized services in the public sector. . . [to] promote, protect[,] and recover the health of individuals, preven[t] and trea[t] diseases, . . .[provide] home care for people in need of motor rehabilitation, the elderly, [and others] in a post-surgical situation [to] avoi[d] unnecessary hospital admissions." The Petitioner also stated she intended to provide home health care to individuals recovering from alcohol and drug abuse "as a substitute service to hospitalizations and detoxification service." Additionally, she noted that by working in the public sector and "collaborating with government agencies, community health centers, and public healthcare programs," it would allow her to "provide cost-effective healthcare delivery" and ensure "individuals who may require assistance but are unable to access or afford private care options" would receive the necessary care.

In her updated professional plan, the Petitioner explained that, as a home health aide, she would "assist with activities of daily living, including bathing, dressing, grooming, and meal preparation . . . [and] monitor vital signs, administer medication as directed, and provide assistance with mobility and exercises." The Petitioner asserted that through this work, she would "innovate the field of healthcare" and that this would "lead to the creation and development of new techniques that will result in immeasurable contributions and impacts to the U.S. healthcare sector, including cost reduction,

[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).

increased successful rehabilitation on patients, enhanced quality of life, enhancement of the workforce, job creation, and economic growth."

In addition to the two professional plans, the record also contained two recommendation letters attesting to the Petitioner's expertise in nursing, and prior experience providing home health care to her patients. The Director concluded that the record did not establish the national importance of the Petitioner's endeavor as she did not show her endeavor would have broader implications beyond the impact to her potential employer(s), patients, or colleagues. Moreover, the Director determined the record did not establish that the Petitioner's endeavor would result in substantial positive economic effects, or otherwise broadly enhance societal welfare.

On appeal, the Petitioner asserts the Director erred in concluding that Petitioner did not establish the national importance of her endeavor, stating the decision "contains numerous erroneous conclusions of both law and fact." The Petitioner contends that the record contains sufficient information and documentation to establish its national importance. The Petitioner relies on the same assertions previously put forth before the Director, but notably does not discuss the evidence in the record with specificity, nor does she explain how it supports her claims or otherwise overcomes the conclusions regarding the limited prospective impact of her endeavor. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022).

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we agree with the Director's evaluation of the evidence, and conclude it does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

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.

The Petitioner asserts that her endeavor is nationally important "due to its potential to create far-reaching impacts in various facets of American society, including the healthcare sector, the economy, job creation, revenue generation, and societal welfare." Yet, the Petitioner does not provide support for these assertions and continues to rely on the importance of the home healthcare field in general, asserting, for example, that home healthcare is critical to reduce hospital admissions and readmissions, and decrease costs associated with hospital admissions. However, this misapplies the *Dhanasar* framework. As previously discussed, 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.

Although the Petitioner's statements reflect her intention to provide valuable services to her future patients and customers, she has not provided sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. For example, in response to the Director's RFE, the Petitioner asserts that her experience will offer a "unique and innovative approach to healthcare that has the potential to significantly enhance the quality of healthcare in the United States," but she does not provide further explanation of her unique and innovative methodologies such that they can be considered to extend beyond her individual patients. 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).

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. *Dhanasar* at 893. Here too, while we agree with the Petitioner that home healthcare will allow her "patients [to] receive the necessary attention and treatments," and avoid hospitalizations that are "costly [and] potentially increase the risk of complications, infections, and other issues," the record does not show how her proposed endeavor stands to sufficiently extend beyond her patients to lead to "national or even global implications" to the healthcare field more broadly at a level commensurate with national importance. *Id.* at 889. Likewise, we recognize that the Petitioner's endeavor of providing home health care will reduce the economic strain placed on healthcare facilities, but she does not establish how the prospective impact of her employment as a single home health aide would have a broad impact consistent with national importance.

Furthermore, the Petitioner has not demonstrated that her intended work as a home heath aid has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects contemplated in *Dhanasar*. *Dhanasar* at 890. On appeal, the Petitioner references reports and publications discussing the economic benefits of home healthcare, and government initiatives aimed at improving home healthcare options to avoid unnecessary costs by both patients and hospitals. Yet beyond the potential cost-saving provided to her patients, the Petitioner does not establish how her work would meaningfully support these initiatives at a regional or national level. Likewise, the Petitioner points to reports establishing the growth of the home healthcare field, and asserts, without support, that her work in this field will "not only create job opportunities but also contribute to economic sustainability." But, 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 home healthcare industry), the record does not show benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor that would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*.

Finally, while we recognize that the Petitioner's plans to both work in the public sector and provide home healthcare for individuals recovering from substance abuse aligns with federal initiatives aimed at improving healthcare and patient outcomes, especially for chronically ill patients, this is not sufficient to establish its national importance. While the stated alignment of these goals with federal

initiatives may speak to the substantial merit of the endeavor, it does not establish the specific endeavor's potential prospective impact.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

B. Eligibility for the Underlying Classification as an Advanced Degree Professional

While the Petition must be dismissed as the Petitioner has not satisfied prong one of the *Dhanasar* framework, upon a de novo review of the record, we will withdraw the Director's determination that the Petitioner qualifies for EB-2 immigrant classification as an advanced degree professional because the record does not support such a conclusion.

As previously stated, the regulatory definition of "advanced degree" states, in pertinent part:

> A United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2) (emphasis added).

To demonstrate five years of post-baccalaureate experience, a petitioner must provide "evidence in the form of letters from current or former employer(s) showing that [the petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The letters must also include "a specific description of the duties performed by [the petitioner]." 8 C.F.R. § 204.5(g)(1).

Prior to entering the United States, the Petitioner earned a bachelor of nursing from [redacted] in Brazil in March 2018. To establish she is an advanced degree professional, the Petitioner provided her bachelor of nursing diploma and transcripts, an academic course-by-course evaluation equating her degree to a U.S. bachelor of science in nursing, her resume, and an employment verification statement provided by the [redacted] confirming the Petitioner's employment as a nurse technician from September 2012 to June 2022. The record also contains two letters of recommendation: one from N-A-S-, who indicates she was the Petitioner's supervisor from 2017 to 2020 while working for the [redacted] and another from Councilman A-B- who commends her work in this position.

At the outset we note that the record contains inconsistencies regarding the Petitioner's employment with the [redacted] The employment verification statement provided by the [redacted] confirms the Petitioner's employment as a nursing technician from September 2012 to June 2022, while the Petitioner's resume also indicates she was employed with the city as a nurse from September 2019 to June 2022. Additionally, the letter from N-A-S-, who claims to be the Petitioner's supervisor at the [redacted] indicates she worked as a nurse assistant from 2017 to 2020, which is inconsistent with her claimed employment in her resume and the employment verification statement. The Petitioner must resolve these inconsistencies in the record

with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the employment verification statement provided by the [redacted] does not provide the details of the Petitioner's employment as mandated by 8 C.F.R. § 204.5(g)(1). Even if the provided evidence of the Petitioner's employment was in compliance with the regulations, she could not establish she attained five years of post-baccalaureate experience, as her employment through June 2022 only accounts for approximately four years and three months of employment following the completion of her bachelor's degree in March 2018. As such, the record does not show that she acquired five years of progressive post-baccalaureate experience in the specialty, and she has not established that she is a member of the professions holding an advanced degree. As the Petitioner has not shown that the proposed endeavor is of national importance under prong one of the *Dhanasar* analytical framework, it would serve no legal purpose to issue a request for evidence for further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification. Accordingly, the Petitioner should be prepared to address this is in any future filings.

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Furthermore, the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, and therefore 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 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.