In Re: 34868477 Date: NOV. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a biostatistician, 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 the Petitioner had not established eligibility for 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 pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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.

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 U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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

[1] 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.

and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. Based on our de novo review of the record, we agree that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first *Dhanasar* prong.

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner indicated that he is a biostatistician. He further detailed that he has expertise in improving predictive algorithms for overall mortality risk in COVID-19 patients, preventing childhood obesity, and early intervention of celiac disease. In a personal statement submitted with the petition, he asserted that his endeavor was to investigate these three conditions in order to "develop novel strategies and innovative statistical models to better pose innovative solutions within these medical domains." The Petitioner expressed his intentions to pursue a position in the United States at [redacted] and stated that he was confident that he could attain a position related to his proposed endeavor. In response to a request for additional evidence (RFE) from the Director, the Petitioner elaborated that he would propose three specific projects. The first was a multi-center randomized clinical trial at two Texas locations assessing patients highly vulnerable to COVID-19. The second was a study at a Texas children's hospital to monitor children aged 3-5 years from low-income families in order to reduce childhood obesity and promote healthy behavior. The third was a longitudinal study conducted at the [redacted] on early diagnosis and prevention of celiac disease. The record additionally includes letters of support, information about the Petitioner's publications such as his Google Scholar citation record, his curriculum vitae, an evaluation of his academic degree, letters from employers, evidence of membership, and industry articles.

In denying the petition, the Director concluded that although the Petitioner's proposed endeavor had substantial merit, the submitted evidence did not establish its national importance, as he had not shown the endeavor's significant potential to employ U.S. workers and did not otherwise demonstrate substantial positive economic effects.

[2] *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 is discretionary in nature).

On appeal, the Petitioner asserts his eligibility for the national interest waiver and contends that he has submitted evidence of his proposed endeavor's national importance. In doing so, he states that he provided formal reports from national and global medical research organizations emphasizing the need for strategies and models to improve solutions for COVID-19, childhood obesity, and pediatric celiac disease. The Petitioner claims that the Director's focus on his endeavor's economic effects was improper under the first prong of the *Dhanasar* framework. He additionally argues that the Director's decision constituted an abuse of discretion and did not consider all relevant evidence. Finally, the Petitioner explains that the Director mischaracterized his proposed endeavor, incorrectly identified him as a researcher rather than a biostatistician, and conflated his proposed employment with his proposed endeavor.

In determining whether the proposed endeavor has national importance under the first prong of the *Dhanasar* framework, we consider its potential prospective impact. *Id.* at 889. We acknowledge the Petitioner's detailed plans regarding his intended research projects submitted in response to the RFE. However, he has not provided independent objective evidence demonstrating how these projects would take place, such as letters from potential partners or funders, including from the institutions where he would purportedly conduct his studies. A petitioner must support his assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner further expressed confidence that he could become employed as a biostatistician in the United States, but he similarly did not elaborate the basis for this statement based on market data or interest by the institution where he stated that he would pursue employment. In *Dhanasar*, the record was supported by probative expert letters regarding the U.S. strategic importance of the Petitioner's endeavor, as well as letters documenting the U.S. government interest and investment in his research. *Dhanasar* 26 I&N, at 893. Here, the testimonial evidence in the record, such as the recommendation letters, does not analyze the Petitioner's specific proposed endeavor or offer evidence of its impact such that it rises to the level of national importance. The letters instead outline the past contributions the Petitioner has made to the field in and general support for the instant petition. Indeed, the Petitioner's arguments on appeal appear to focus on the national importance of the *subject matter* of the Petitioner's endeavor, rather than of the endeavor itself. 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." *Dhanasar* 26 I&N, at 889. While we agree with the Director that the Petitioner's endeavor has substantial merit, he has not corroborated his claim of its national importance.

The Petitioner correctly noted on appeal that *Dhanasar* does not require him to show economic impact, as the Director's denial indicated. *See Id.* at 89 ("[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"). We further recognize the Director's error in mischaracterizing the Petitioner's stated occupation. Nevertheless, our review of the record, including the arguments on appeal, does not show by a preponderance of the evidence that the Petitioner has established the national importance of the proposed endeavor as required by the first prong of our *Dhanasar* precedent decision.

Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.