U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34874801

Date: NOV. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a clinical psychologist and an entrepreneur, 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposes to manage a psychology clinic in [redacted], Florida. 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 conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In denying the petition, the Director concluded that the Petitioner did not establish the proposed endeavor's substantial merit and national importance, that she is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director erroneously denied the petition. The Petitioner further contends that the Director failed to apply the proper standard of proof and instead imposed a novel standard. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The Petitioner states that through her clinic, she intends to provide comprehensive psychological care while overseeing the work of other psychologists. She further states that she plans to deliver high-quality mental health services and aims to expand by opening additional clinic franchises. The record includes a

business plan, recommendation letters, and industry reports and articles related to the field of psychology and mental health. We conclude that the Petitioner's proposed endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "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. The Petitioner contends that her clinic's operations are expected to have substantial economic effects by delivering "high-quality mental health services." While the Petitioner claims that her endeavor will "produce significant national benefits due to the ripple effects of her professional activities," the Petitioner has not demonstrated that her undertaking will have implications beyond her patients that rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner argues that her proposed endeavor improves access to essential mental health care and promotes societal well-being nationwide. She also contends that her clinic will increase productivity and well-being among individuals receiving treatment, which in turn supports economic growth and reduces societal costs associated with untreated mental health issues. 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, the Petitioner asserts that her clinic will enhance societal welfare by promoting mental health awareness, reducing stigma, and fostering a culture of psychological well-being. The record nonetheless does not include adequate corroborating evidence, to show that the Petitioner's specific proposed endeavor as a psychologist and manager of her clinic offers broader implications in her field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance.

The Petitioner's business plan projects hiring six employees, including herself, by year five, with anticipated revenue of $601,596. The Petitioner's plan, however, does not show how these revenue and employment projects, even if plausible, have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the country. Furthermore, the Petitioner's revenue and staffing goals fail to demonstrate that her clinic would provide substantial economic benefits to Florida, the region, or the broader U.S. economy at a level commensurate with national importance. For example, the Petitioner has not shown that her staffing levels would utilize a significant population of workers in Florida or significantly impact job creation or economic growth in the area and beyond. Additionally, the record lacks supporting documentation to demonstrate how the impact of the Petitioner's proposed endeavor would extend beyond her prospective clients or patients to broadly affect the psychology and mental health industry at a level of national importance. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show that the benefits to the regional or national economy resulting from the Petitioner's endeavor

would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner emphasizes the importance of psychologists and notes the shortage of behavioral health workers, therapists, and school counselors. As previously mentioned, 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.* at 889. Although the Petitioner states her endeavor is of national importance, she has not sufficiently explained how her endeavor will positively impact the U.S. economy, offer broader implications in the psychology and mental health field, and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. It is also important to note that the shortage of healthcare professionals does not render the Petitioner's proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her 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 her eligibility under the second and third prongs outlined in *Dhanasar*. *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 she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.