U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828667

Date: NOV. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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. 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, petitioners must 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. In addition, petitioners must show the merit of 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner intends to act in her capacity as a nurse and establish a company, [redacted] In her revised business plan, submitted in response to the Director's request for evidence[2], she stated that the company, "will be a Florida-based home care enterprise focusing on providing comprehensive outpatient nursing care, home hospitalization, psychological assistance, and occupational therapy for patients of all ages." The Petitioner asserted that her company, "will play a pivotal role in enhancing the accessibility and quality of healthcare services in the U.S., especially for those in vulnerable situations."

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. Although the Director found the proposed endeavor did not possess substantial merit, the Petitioner sufficiently demonstrated that the endeavor falls within one or more of the areas contemplated by *Dhanasar*.

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 specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner contends that she provided evidence that discussed the importance of various national and government initiatives, such as the "Impact of Home Care Services on Patient and Economic Outcomes," "Aging in Place," and the "Elder Justice Initiative," the matter here is not whether these initiatives, as well as the topics of nursing, healthcare, or similarly related subjects, are nationally important. Rather, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her services as a nurse through her company in the [redacted] Florida area. Likewise, her submission of "Probative Research" covers a wide range of topics, such as aging populations, the effects of COVID-19, and maternity care, rather than establishing the national importance of her particular professional services or business.[3]

In *Dhanasar*, we 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 frequently discusses fact sheets and research regarding shortages in the nursing industry and states that, through her proposed endeavor, she will "address[] these staffing challenges . . . through initiatives like [her] proposed company." However, the alleged shortage of occupations or occupational skills does not render her 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.

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

[3] The Petitioner's arguments and evidence relate to the substantial merit aspect of the proposed endeavor rather than the national importance part.

Moreover, the Petitioner stresses her letters of recommendations and "endorsements from healthcare professionals and organizations that recognize the critical need for expanded nursing services and home-based care." However, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

The Petitioner contends that she presented an expert opinion letter from [redacted], a professor with [redacted], who found her proposed endeavor to have national importance. While the letter opines on the potential benefits of the company's home healthcare services, the letter does not explain how they have broader implications for our country. Here, the letter repeats the same arguments addressed above pertaining to the importance of various topics and subjects without showing the wider effect in the field of the Petitioner's particular proposed endeavor.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how her company would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how her endeavor sufficiently extends beyond her prospective clients, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, while she provided a business plan for the proposed company, the Petitioner did not present any supporting evidence, corroborating the assertions and figures. Moreover, the Petitioner did not demonstrate how her business plan's claimed revenue and employment projections, even if credible or plausible, have significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Although the business plan forecasts sales from $539K in year 1 to $1.5M in year 5, the Petitioner did not establish the significance of this data to show that the benefits to the regional or national economy would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Similarly, even though the business plan claims the creation of 7 positions in year 1 and 21 positions in year 5, the Petitioner did not demonstrate the relevance of these numbers and show that such future staffing levels would provide substantial economic benefits to the [redacted] Florida region or the U.S. economy more broadly at a level commensurate with national importance. Although the Petitioner provided research which contends that the creation of these sales figures and jobs actually represents a higher figure indirectly, the Petitioner, for instance, did not establish that such employment figures would utilize a significant population of workers in the area or would substantially impact job creation and economic growth, either regionally or nationally. For all these reasons, the record does not demonstrate that, beyond the limited benefits provided to its prospective clients and employees, the Petitioner's proposed endeavor has broader implications rising to the level of having national importance or that it would offer substantial positive economic effects.

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not

demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).