U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34242665

Date: OCT. 31, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dentist, 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 Nebraska Service Center denied the petition, concluding that the record establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, but does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 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. *Matter of Dhanasar*, provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner's proposed endeavor is to continue his work as a dentist in the United States, focusing on general dentistry, implantology, and communication campaigns promoting oral health education. The Director determined that the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree. However, the Director further concluded that the Petitioner did not establish eligibility for any of the three prongs of the *Dhanasar* framework, and therefore is not eligible for a national interest waiver as a matter of discretion. On appeal, the Petitioner contends that the Director erred in the determination that his proposed endeavor lacks sufficient evidence of broader impact within the field of dentistry. We disagree. Upon de novo review, we conclude the Petitioner's proposed endeavor does not rise to the level of national importance as set forth in the *Dhanasar* framework.

A. EB-2 Classification

The Petitioner is a dentist. He submitted a diploma and transcripts for his foreign degree in dentistry. The Petitioner initially submitted an academic evaluation stating that his degree was equivalent to a U.S. bachelor's degree in health studies. The Petitioner also submitted a resume that states he has a bachelor's degree in odontology and a proposed endeavor statement that states he has a bachelor's degree in dentistry. The Director issued a request for evidence (RFE) stating that the field of dentistry in the United States generally requires a doctorate degree and per the regulations, if a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2). In response to the RFE, the Petitioner submitted a new academic evaluation that references the same documents but concludes that the Petitioner's degree is equivalent to a U.S. doctor of dental surgery. There is no explanation for the conflicting conclusions in the two evaluations and the Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree without acknowledging this conflict. As the record does not otherwise establish by a preponderance of the evidence that the Petitioner is eligible for a national interest waiver as a matter of discretion, we will reserve the issue of the Petitioner's eligibility for the EB-2 classification.[2]

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[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 is discretionary in nature).

[2] *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 an applicant is otherwise ineligible).

B. National Interest Wavier

1. Substantial Merit

The first 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. The Petitioner states that his proposed endeavor is to work as a dentist in the United States, offering services in economically depressed areas, including implantology, and promoting oral health through communication campaigns. The record includes information on the importance of oral healthcare, the dental industry, and the disparities in the United States in oral health education and access. We conclude that the proposed endeavor has substantial merit.

2. National Importance

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner contends on appeal that "[s]upporting documentation was submitted to establish the national and even global implications of the proposed endeavor to the broader field of oral healthcare." The Petitioner states that his proposed endeavor, "aims to redress longstanding healthcare disparities by enhancing oral health outcomes among underserved populations, thereby aligning with broader efforts to promote health equity and social justice." The Petitioner plans to do this by providing general dentistry services, implantology services, and promoting oral healthcare education through communication campaigns. The Petitioner states that he will implement specific treatment protocols aimed at lowering the costs of treatment for his patients and he intends to set standards and protocols for dental practices. In addition, he plans to expand his services to "[n]ursing homes, orphanages, hospitals, emergencies and public disaster scenarios."

While we acknowledge the merit in this work, the record does not establish how the Petitioner's proposed endeavor will impact more than his patients or his prospective employer. Although the Petitioner states his intention is to have a broader impact on dentistry, his statements are not supported by relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. The record lacks specificity on how he will do this and how his proposed endeavor will broadly impact the dental industry. Here, with his proposed work in general dentistry and implantology, even considering his intent to work with under privileged populations and to expand to outside facilities; this impact is limited to his patients. In addition, the Petitioner states that he is committed to setting standards and protocols for dental practices, however the record does not establish how this will impact more than his prospective employer. For example, in the proposed endeavor statement, the Petitioner states, "[b]y carefully helping my employer select suppliers of dental materials and dental prosthetics laboratories to collaborate with, I will ensure optimal process of materials and dental appliances for dental businesses and patients. . . . I intend to help my employers offer patients payment plans that can be tailored to the needs of each individual. . . ." This establishes an impact to the Petitioner's prospective employer and his patients, but not a broader impact to the industry as is required by *Dhanasar*.

In addition, the Petitioner states that he will improve oral health with public education, communication campaigns, public outreach, and in training dental practitioners. 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*, 26 I&N Dec. at 893. Similarly, here, although the Petitioner proposes to promote oral health education, *Dhanasar* concluded this does not constitute a broader impact on the industry as the record does not detail how this will reach a broader audience outside of his patients, employers, or prospective students.

The record contains industry articles and reports on the current state of the field of dentistry. However, 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. Here, the Petitioner improperly relies upon the importance of the industry as sufficient to establish the national importance of his proposed endeavor. Without sufficient documentary evidence of the specific proposed endeavor's broader impact in the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework. For example, the Petitioner points to articles and studies about the "prevalence of oral health diseases and the disparities based on socioeconomic status, race, and geographic location, underscoring the need for interventions to promote health equity." Although this provides good background information, demonstrates the importance of the industry, and provides evidence of substantial merit; it does not speak to the Petitioner's specific endeavor and its impact on the industry. The Petitioner intends to work in this field, but there is insufficient evidence to establish that he will broadly impact this field. Without sufficient documentary evidence of the specific proposed endeavor's broader impact on the industry, the Petitioner's proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

The Petitioner asserts that his proposed endeavor has significant potential to employ U.S. workers and substantial positive economic effects. An 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 industry data, such as the submitted U.S. Dental Services Market analysis, provides a comprehensive analysis of the industry and therefore "demonstrates [the proposed endeavor's] critical role in the broader U.S. economy." In addition, the Petitioner states that the record shows that one additional dentist can have an annual impact of $1,738,848 on the economy. Lastly, the Petitioner states that a submitted article shows that improving oral health reduces the economic burden associated with untreated dental conditions. As with our discussion of the industry articles above, we acknowledge the importance of the dental industry and its potential impact on the economy, however, the Petitioner still must show how their specific proposed endeavor will have substantial positive economic effects. The evidence highlighted on appeal focuses on the broader field of dentistry and does not offer any specific or qualifiable economic impact attributable to the Petitioner's specific proposed endeavor. While his proposed endeavor may benefit his direct patients and prospective employers, as stated above, the record does not establish that the benefit will impact the field more broadly and in turn, improve the economy in a broader way to rise to the level of national importance.

The Petitioner also contends that his proposed endeavor, "extends beyond direct employment opportunities; but will establish partnerships or set up his own practice and he will create job opportunities for dental professionals, but also stimulate jobs for those in ancillary industries, and will

create employment opportunities within the dental industry." *Dhanasar* states that a proposed endeavor can rise to the level of national importance by having, "significant potential to employ U.S. workers." *Dhanasar*, 26 I&N Dec. at 890. However, there is no information on the number of jobs or types of jobs projected. Consequently, we cannot evaluate if these jobs are directly attributable to the Petitioner's proposed endeavor or if they establish "significant potential to employ U.S. workers." Therefore, we cannot conclude this rises to the level of national importance. In addition, the Petitioner states that there is a shortage of workers in the dental industry. However, a shortage of qualified professionals does not render the work of an individual nationally important under *Dhanasar*. The Petitioner asserts his work will create more dental professionals and therefore help with the shortage. Here, the Petitioner has not established that his specific proposed endeavor stands to broadly impact or significantly reduce the claimed national shortage as there is no quantifiable evidence to support how many workers the Petitioner's proposed endeavor plans to create. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner asserts that the Director made a procedural error by demanding that the proposed endeavor must advance a critical and emerging technology. It appears that the Director was not stating that a proposed endeavor must meet this criterion, but was discussing other ways a Petitioner could establish the proposed endeavor's national importance, such as letters of interest from U.S. government agencies or that the proposed endeavor promises to advance a critical and emerging technology. While the Petitioner is correct, this is not a requirement, it is something that can be taken into consideration when analyzing eligibility for a national interest waiver. *See generally* 6 *USCIS Policy Manual* F.5(3)(D)(2). Therefore, this analysis was not improper.

The Petitioner contends that there is specific interest from the U.S. government in his proposed endeavor as the Affordable Care Act (ACA) includes provisions related to oral health. This again establishes interest in the overall dental industry but does not establish interest in the Petitioner's proposed endeavor itself. In addition, the Petitioner states that the ACA shows the federal government's profound interest in bolstering healthcare access, particularly for marginalized communities. The proposed endeavor statement appears to say that the Petitioner will be primarily working in [redacted] Massachusetts, but he can, "engage with and benefit economically distressed areas across different states and regions." However, he does not specify other locations besides later stating, "[I] recognize the potential to make a positive impact on **economically distressed areas**, especially in the [redacted] area. (emphasis in original)." We cannot determine if his proposed endeavor will be located in or serve economically distressed areas and what the impact of his proposed endeavor will be as his plan lacks specificity.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. As the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework, 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 Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established by a preponderance of the evidence that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.