U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33378038

Date: SEP. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an optometrist specialist and 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 Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding that the Petitioner 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 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.

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, 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:

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

According to the record, the Petitioner obtained a degree in optometry in June 2015 in Colombia. She then worked for an eye care company as an optometrist and scientific director from August 2015 to December 2018; a separate eye care company as an optometrist, scientific director, and shareholder from January 2016 to September 2022; and a retail company as a sales executive from January 2019 to January 2023. In May 2023, she entered the United States on a student visa. She filed her national interest waiver in July 2023.

The Petitioner's proposed endeavor is to work as an optometrist specialist providing high-quality services diagnosing and treating patients in need of eye and vision care, contribute to the advancement of the optometry profession as a researcher, and establish clinics in underserved areas to increase access to quality vision care in these communities.

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner's proposed endeavor has substantial merit and national importance, satisfying *Dhanasar's* first prong.[2] However, the Director concluded the Petitioner had not established eligibility for a national interest waiver because she did not show that she is well-positioned to advance her proposed endeavor and that, on balance, waiving the job offer requirement would benefit the United States, as required under Dhanasar*'s* second and third prongs.

A. Well Positioned to Advance the Proposed Endeavor

The Director's decision identified the relevant evidence submitted by the Petitioner pertaining to Dhanasar*'s* second prong, including school documents, a resume, a personal future plan and an updated personal future plan ("future plan"), expert opinion letters, and letters of recommendation. The Director acknowledged the evidence reflected the Petitioner's education and success in her career but determined this evidence, by itself, was not sufficient to establish she is well-positioned to advance her proposed endeavor as required under *Dhanasar's* second prong and that the record otherwise lacked evidence of her progress towards achieving the goals of her proposed endeavor.

[2] The Director determined without analysis that the Petitioner established her proposed endeavor is of substantial merit and national importance. Based on our de novo review of the record, we disagree with the Director's determination that the Petitioner established her endeavor is nationally important. The record does not establish that the Petitioner's proposed endeavor has broader implications to the field of optometry beyond her own clients and business or that it has significant potential to employ U.S. workers or other substantial positive economic effects, commensurate with national importance as contemplated by Dhanasar. Matter of Dhanasar, 26 I&N Dec. at 889-89. However, because we agree the Petitioner has not established she is well-positioned to advance her endeavor, we need not address the national importance of her endeavor in our analysis here. 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 alternative issues on appeal where an applicant is otherwise ineligible).

On appeal, the Petitioner submitted a brief discussing evidence from the record below and re-asserting her arguments of eligibility. The Petitioner also asserts the Director did not apply the preponderance of the evidence standard in adjudicating her petition and instead held the Petitioner to a higher burden of proof. According to the Petitioner, there is no checklist of factors to establish whether an individual is well-positioned and the Director's decision was "based on the omission of factors relevant [to] the analysis," rather than weighing the evidence provided. Our review indicates the Director properly considered the petition and relevant evidence under the applicable preponderance of the evidence standard. While the Petitioner is correct that there is no specific checklist of factors she needs to show to establish she is well-positioned to advance her endeavor, she has not demonstrated that the evidence she has submitted meets *Dhanasar's* second prong by a preponderance of the evidence.

To determine whether a petitioner is well-positioned to advance their proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Matter of Dhanasar, 26 I&N Dec. at 890; see generally 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual (discussing, as guidance, specific evidentiary considerations for entrepreneurs and describing, as guidance, the types of evidence that may be considered, identifying degrees, certifications, licenses, letters of experience as one category of many).

On appeal, the Petitioner asserts that her education, skills, and work history clearly evidence her skills, knowledge, and record of success, and thereby establishes that she is well-positioned to advance her proposed endeavor of working as an optometrist specialist, contributing to the advancement of the optometry profession as a researcher, and establishing clinics in underserved areas. The Petitioner describes her education and degree in optometry as evidence of her being well-positioned to advance her endeavor. However, holding a degree is just one factor in assessing whether a petitioner is well-positioned. See generally 6 USCIS Policy Manual, supra, at F.5(D)(2) (explaining, as guidance, a degree alone is not a basis to determine that a person is well-positioned to advance the proposed endeavor). The Petitioner asserts she also has held an active professional license in optometry in Colombia since July 2016. However, in the record below, she also stated that she does not have her license to practice optometry in the United States. While she claimed she would be permitted to "work fully as an optometrist in the state where [she] receive[s] [her] license, and in any state, if any, where there is license reciprocity" the record does not contain any evidence of her obtaining any necessary licensure here in the United States to enable her to work as an optometrist.

The Petitioner also refers to her letters of recommendation, her future plan, and expert letters and asserts this evidence emphasizes her record of success, expertise, and contributions to patient care. She highlights parts of the recommendation letters that discuss how she has helped treat countless patients; worked with precision; performed academic and commercial training for her employers; contributed extensively to the distribution of and training on products at clinics and stores in Colombia; received national recognition for having the highest sales growth for contact lenses; and developed marketing strategies. The Petitioner also quotes from one of her expert letters, which stated she has, a history of success driving product sales within the industry and her proactive initiative, skills, and business expertise will be valuable to the U.S. market. The Petitioner also submits a recommendation letter highlighting her experience of providing vision testing for new recruits in the Colombian

National Navy and submitted a recommendation letter describing her work as integral to the health and security of Colombia. The Petitioner also discusses her earned remuneration for her services as evidence of her success.

We acknowledge that the Petitioner's evidence demonstrates she is an accomplished optometrist and sales representative with a record of success in working as an optometrist specialist in Colombia. However, the Petitioner's clinical duties as an optometrist and her sales and training experience address only one part of her proposed endeavor. As discussed below, the evidence of her education, skills, knowledge, and claimed record of success are not sufficient to support she would be well-positioned to advance her endeavor, as it relates to establishing clinics in underserved areas, which is integral to her being able to perform the clinical portion of her proposed endeavor, or to contribute to the advancement of the optometry profession as a researcher.

The Petitioner quotes from her future plan to demonstrate her progress towards achieving her proposed endeavor. In her future plan, she stated she co-owned one of the companies she worked for and ran the business, managed employees, provided customer service functions and promoted sales. In the future plan, she relies on one of the recommendation letters from a former colleague, asserting the letter demonstrates she is a capable, experienced and qualified business professional who can own and manage her own optician clinic to great success. The Petitioner also relies on another recommendation letter from another colleague, asserting the letter establishes her reputation in the field because the author, a new owner of a company, stated the Petitioner was the only optometrist that came to mind when opening her office due to her skill and desire to improve people's eye health. We acknowledge this evidence of past entrepreneurial activity. However, the Petitioner has not submitted evidence that she currently owns and is running a clinic in the United States, and neither author of these letters discussed the Petitioner's business acumen, her ability to run a business and manage others, the success of the business she claims to have co-owned, or any specific examples of how she is well-positioned to advance her endeavor of establishing clinics in underserved areas of the United States, e.g., evidence that she actually established the business she was co-owner of and held shares in, that the business was in an underserved area. See generally 6 USCIS Policy Manual, supra, at F.5(D)(4) (discussing, as guidance, that an entrepreneur petitioner may submit evidence of ownership and role in a U.S.-based entity; evidence establishing the petitioner's past entrepreneurial achievements corroborating projections of future work in the national interest as favorable factors in establishing the petitioner is well-positioned to advance the endeavor).

In her future plan, she also explained that she plans to contribute to the advancement of the optometry profession through academic publications and presentations at scientific conferences and events held by the industry. She describes co-publishing a thesis as part of her degree requirement, entitled [redacted] According to the Petitioner, her thesis was in an area with few studies in Colombia, despite the necessity for updated information that meets the characteristics of professionals in the health sector. However, the Petitioner did not submit documentation demonstrating a strong citation history of her work or excerpts of published articles showing positive discourse around, or adoption of, her work to demonstrate progress towards achieving her proposed endeavor of contributing to the advancement of the optometry profession as a researcher. The Petitioner also did not describe performing research after completing her thesis. In sum, the Petitioner's evidence does not sufficiently corroborate her assertions of past achievement to

demonstrate progress towards her proposed endeavor and, as a result, that she is well-positioned to advance her proposed endeavor.

As discussed above, Dhanasar identifies other relevant evidence a petitioner may submit to establish they are well-positioned to advance their proposed endeavor, including a business or model plan for future activities related to the proposed endeavor or evidence demonstrating progress towards achieving the proposed endeavor. Matter of Dhanasar, 26 I&N Dec. at 890. The Petitioner claims her future plan represents her business or model plan. However, the documents do not specify future activities related to the proposed endeavor of researching and establishing clinics. For example, the Petitioner's future plan does not provide specific details of what future research she plans on pursuing to contribute to the advancement of the optometry profession or otherwise identify the steps she has taken or intends to take towards advancing her research plans. Similarly, the future plan documents do not provide details on how she plans to establish clinics in underserved areas. In the absence of a specific prospective plan or explanation by the Petitioner, it is unclear, for example, what role the Petitioner intends to have in her clinics, and, as a result, what relevance her sales skills, for example, would have in advancing her proposed endeavor.

The Petitioner also has not provided evidence of interest of potential customers, users, investors, or other relevant entities or individuals in her proposed endeavor, particularly with respect to her intentions to engage in research and establish clinics, to further her assertion that she is well-positioned to advance her endeavor. Id. at 890.

We have examined the evidence relating to the remaining second prong factors set forth in Dhanasar, including the Petitioner's education, skills, knowledge; progress towards achieving the goals of the proposed endeavor; and a model or plan for future activities. Id. at 890. Based on our de novo review of the evidence, the record is insufficient to demonstrate that the Petitioner is well-positioned to advance her proposed endeavor and the Petitioner has not established that she satisfies the second prong of the Dhanasar framework.

B. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. As we have concluded the Petitioner has not demonstrated she is well-positioned to advance her proposed endeavor, we reserve the Petitioner's arguments regarding whether she has demonstrated the third Dhanasar prong. See INS v. Bagamasbad, 429 U.S. at 25 (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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the Dhanasar analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.