U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33963489

Date: SEP. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief health officer (CHO), seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 that although the Petitioner is a professional holding an advanced degree, he did not establish 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. 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

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 of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The Petitioner explained that his proposed endeavor is to work as a CHO to ensure the effective management and administration of a hospital, and his day-to-day duties will involve the supervision and management of the daily operations to ensure patients receive proper medical care. The Petitioner also stated that by leveraging his unique blend of medical and business expertise, his goal is to deliver innovative and cost-effective healthcare solutions, particularly targeting underserved populations.

The Director acknowledged that the Petitioner's proposed endeavor has substantial merit, and that he is well-positioned to advance the proposed endeavor. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner submits a brief that was copied virtually verbatim from its letter submitted in response to a request for evidence (RFE). The Petitioner has not contested any aspect of the Director's decision and has not identified an erroneous conclusion of law or statement of fact on the part of the Director as a basis for the appeal.

We note that the Director's decision adequately addressed the evidence submitted with respect to whether the Petitioner demonstrated that he merited a discretionary waiver of the job offer requirement, and explained why such evidence was insufficient to meet the Petitioner's burden. Further, the decision reflects that the Director took into consideration the Petitioner's response to the RFE, which is now re-submitted on appeal in lieu of a brief addressing the denial decision. The Petitioner was therefore given a sufficient explanation of the grounds for denial as required by 8 C.F.R. § 103.3(a)(1)(i), and a fair opportunity to contest the decision. We agree with the Director's determination that the Petitioner did not establish eligibility for the benefit sought.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. As it relates to the Petitioner's experience and ability claims, those relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Moreover, the Petitioner must establish the national importance of his business rather than the

importance of the healthcare industry, immigration, and entrepreneurism.[2] Further, "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.* The broader implications of the proposed endeavor, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. And 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.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. 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. We recognize the overall value of managing a hospital; however, the evidence does not sufficiently demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the hospital and the patients served by that hospital, or that his proposed work would otherwise have broader implications for the healthcare industry or initiatives. Specifically, the Petitioner emphasizes his goal to reduce healthcare costs by leveraging technology and innovation; however, the record does not establish with specific, probative information how the Petitioner's services would have broader implications beyond the patients of the hospital he will manage. The record does not establish the Petitioner has plans to introduce novel methodologies or techniques that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to research and development of the healthcare industry as a whole. Here, the record does not show through supporting documentation how his services as a CHO at a specific hospital stands to sufficiently extend beyond his prospective patients to impact the industry or the U.S. economy more broadly at a level commensurate with national importance. In addition, the Petitioner submitted email correspondence from recruiters to the Petitioner regarding several employment opportunities but none of them were for the position of chief health officer, and the Petitioner did not explain if he might take one of these employment opportunities instead of the position of chief health officer which may change the proposed endeavor. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the Petitioner has not sufficiently demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. The Petitioner's business plan indicated that he would provide more affordable healthcare which in turn will allow individuals to have more disposable income to spend on goods and services and thus creating a ripple effect benefitting the U.S economy and creating employment opportunities. However, the Petitioner does not explain how managing a hospital leads

[2] The Petitioner's contentions and submissions of industry articles and reports relates to the substantial merit of the proposed endeavor rather than the national importance.

to an individual changing the affordability of healthcare. Changing healthcare laws and prices is a complicated process and the Petitioner did not provide sufficient evidence to show how an executive of a hospital will change the national cost of healthcare. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to his future work, the record does not show that 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 has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility as to national importance, we reserve our opinion regarding whether the record establishes the remaining *Dhanasar* prong. *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 the applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that he 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.