U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22726423

Date: OCT. 27, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a nurse, seeks second preference 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 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 the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "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).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

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 he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen's qualifications 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. In each case, the factor(s) considered must, taken together,

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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.[2]

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.

Initially, the Petitioner described the proposed endeavor as a plan "to work with a health care facility to provide expert nursing advice and treatment to patients." The Petitioner further asserted the following:

> My specific endeavor will potentially impact the U.S. in the following ways:
>
> - Fill a position as a [n]urse that is vacant due to high demand for professionals of my caliber;
> - Provide patients with care;
> - Promote the management, organization and control of practices related to healthcare;
> - Ensure quality of healthcare services in U.S. [m]edical [i]nstitutions;
> - Train and advise medical professionals and medical students in the nursing of critical care patients;
> - Educate patients, their families, and communities on proper care;
> - Recommend therapeutic interventions with attention to safety, cost, invasiveness, simplicity, acceptability, adherence, and efficacy; and
> - Generate tax revenue for the United States.

In response to the Director's request for evidence (RFE), the Petitioner reiterated that the proposed endeavor is a plan "to work with a healthcare facility to provide expert nursing advice and treatment." The Petitioner added that, between filing the Form I-140, Immigrant Petition for Alien Workers, and submitting the RFE response, she "accepted a full-time position as a [c]ritical [c]are [r]egistered [n]urse at an inpatient hospital that provides highly specialized care for critically ill patients including covid recovery patients." The Petitioner added that she "accepted job offers to work in vaccination drives aiming at increasing vaccination numbers and overall protection in North Carolinian communities." The Petitioner reiterated the bullet-point list provided above and she added that she has "participated in many research studies providing data and information that will offer insights to researchers," naming two studies for which she provides data about her child: one that "focuses on mother and child health" and another that "tests a treatment for young children with peanut allergy."

The Director acknowledged that "the [P]etitioner's proposed endeavor as a nurse in the United States, providing her expertise and services to U.S. companies, which serves the business interests of her

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

employer (or prospective employer), its clients/customers, alliances, and the [P]etitioner's workplace and prospective patients, has substantial merit." However, the Director concluded that the record "does not demonstrate that the [P]etitioner's proposed endeavor has national importance" because it "does not convey an understanding of how the [P]etitioner's proposed employment activities stand to have a broader impact on her field."

On appeal, the Petitioner asserts that the following evidence establishes that the proposed endeavor has national importance:

- Petitioner's [p]rofessional [p]lan and [s]tatement, which extensively describes her credentials, expertise, professional accomplishments, and allows concrete projections of the benefits she may offer to the U.S.;
- Evidence of the Petitioner's work in the field, which demonstrates her vast contributions in the [n]ursing field;
- Letters of [r]ecommendation from experts in the field, which confirms the Petitioner's distinguished expertise, significant contributions and importance in the [n]ursing field; [and]
- Industry [r]eport and [a]rticles, demonstrating the national importance of the Petitioner's proposed endeavor to work as a nurse, supporting continuing health education and disease prevention programs and initiatives; as well as the steep shortage in the U.S. of professionals in the field.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's reliance on her prior career experience and qualifications, and on industry reports and articles in the record regarding nursing and healthcare in general, is misplaced. The Petitioner's prior career experience is relevant to the second *Dhanasar* prong, whether the Petitioner is well-positioned to advance the proposed endeavor, but not to the first *Dhanasar* prong, whether the proposed endeavor has both substantial merit and national importance. *See id.* Similarly, the letters of recommendation, describing the Petitioner's prior career, rather than the prospective endeavor, are relevant to the second *Dhanasar* prong but they do not address whether the proposed endeavor may have national importance, as required by the first *Dhanasar* prong. *See id.* As explained above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. In turn, although the Petitioner references "concrete projections of the benefits she may offer to the U.S." on appeal, the professional plan and statement submitted in response to the Director's RFE reiterates that the endeavor will benefit the Petitioner's employer and its clients and patients, and it provides information regarding nursing and healthcare in general; however, it does not establish how the endeavor will have national

importance. *See id*. at 889-90. The generalized industry reports and articles in the record regarding the nursing and healthcare industries do not address the specific endeavor the Petitioner proposes to undertake and how it may have national importance. 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). She has not done so here.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.