U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26579504

Date: APR. 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a dentist, 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. 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 the Petitioner had not established 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, 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- 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.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

The Director's decision did not determine whether the Petitioner qualifies as a member of the professions holding an advanced degree. Instead, the Director only addressed the Petitioner's eligibility for a national interest waiver, which is the sole issue on appeal.[2]

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a "Professional Plan & Statement" indicating:

> I intend to continue using my experience and knowledge in dentistry by working as a Dentist . . . .
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> . . . .
>
> I bring 13 years of progressive experience and acumen as a Dentist in Brazil's oral health industry . . . .
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> . . . .
>
> My proposed endeavor in the United States will be to work in the U.S. as a Dentist, improving and optimizing patient care, and teaching future medical professionals in this specialty . . . .
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> . . . .
>
> My career plan in the United States is to work with American dental clinics that require my specialized knowledge, years of experience, and significant expertise . . . .
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> . . . .
>
> . . . I will contribute to U.S. dental clinics [] by helping to improve their management, organization, and control practices as well as ensuring quality services . . . .

In response to the Director's request for evidence (RFE), the Petitioner submitted a "Definitive Statement" reflecting:

> I intend to continue using my expertise and knowledge, gained through my over fifteen (15) years of professional experience, to work as a Dentist in the field of Dentistry in the United States. I will do this by developing and expanding my own business in the nation, [redacted] My company will be based out of the state of South Carolina.

[2] Because the Petitioner did not establish eligibility for a national interest waiver on appeal, we need not remand the decision to the Director in order make a determination on the underlying immigrant classification.

. . . .

> In a nutshell, [redacted] will be focused on offering dentistry services with a personalized treatment plan in a friendly atmosphere. The clinic will provide dental treatments by dentists, dental specialists, dental assistants, and dental hygienists in a stress-free environment. The clinic will provide dentistry solutions, including cleaning, implants, and root canals, among other procedures, with modern technologies, and experienced staff.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner states that she "plans to build her career experiences and offer her specialized dentistry services to U.S. entities that wish to improve their client's overall health" and "through her future U.S. company, [redacted] she will prioritize the domestic job market by employing American workers." As indicated, the Petitioner initially claimed that she intended to work with dental clinics. However, in response to the Director's RFE, the Petitioner asserted that she intended to open and operate her own dental clinic. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, we will not consider the Petitioner's materially changed proposed endeavor of opening and operating [redacted]

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 stresses the importance of the dentistry profession, oral health, and dental coverage and insurance, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular services at dental clinics rather than the importance of dentists and the dental industry in the United States. 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.

In addition, the Petitioner stresses her "experience and knowledge," "13 years of progressive experience and acumen," and "specialized knowledge, years of experience, and significant expertise." The Petitioner's experience and abilities in her field 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 she proposes to undertake has national importance under *Dhanasar*'s first prong.

Moreover, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. The

Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of continuing her work as a dentist in a clinic, as well as teaching future medical professionals, rises to the level of national importance. 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. *Id.* at 893. Here, the record does not show through supporting documentation how her specific dental services stand to sufficiently extend beyond her prospective clinics or patients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her dental position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of her 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 her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she 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.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).