U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23791732

Date: AUG. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish either the Petitioner's eligibility for EB-2 classification or that a waiver of the classification's job offer requirement is 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Director found that the Petitioner did not establish that she is an advanced degree professional nor that she is an individual of exceptional ability, and as such did not establish that she qualifies for EB-2 classification. The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* analytical framework, and therefore did not establish that a waiver of the job offer requirement is in the national interest. We reserve on the question of the Petitioner's EB-2 eligibility and discuss below whether she has established eligibility under the *Dhanasar* framework. *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). While we do not discuss each piece of evidence, we have reviewed and considered each one.

As to the proposed endeavor, in her initial filing the Petitioner stated that she intends to work as a critical care nurse to "plan, direct, coordinate and provide daily patient care and ongoing treatment." In response to the Director's request for evidence (RFE), the Petitioner submitted a new "definitive statement" in which she states that she intends to establish and serve as the chief executive officer (CEO) of a company called [redacted] which will "specialize in delivering a portfolio of specialized health care services and medical devices, which will connect patients to the best resources and services available in the market." The RFE response also included a business plan for this venture.

In analyzing the first prong of the *Dhanasar* framework, the Director found that the Petitioner established the substantial merit of her proposed endeavor as a critical care nurse but not its national importance. The Director concluded that the Petitioner's plan to establish a health care company, submitted in response to the RFE, constituted a material change to the proposed endeavor and, as such, would not be considered. The Director further noted that the business plan and the incorporation documents for this company postdated the filing of the petition, and therefore concluded that they do not help establish eligibility at the time of filing. In considering the Petitioner's proposed endeavor as initially stated—to be a critical care nurse—the Director found that the Petitioner did not establish that her employment as a nurse would have a broad impact that would reach beyond her patients and her employer. Finally, the Director noted that although the Petitioner submitted articles and industry information about the nursing shortage in the United States and the importance of the nursing occupation, this evidence relates to the substantial merit of the endeavor, which the Director agreed was established, and does not establish its prospective potential impact.

[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).

On appeal, the Petitioner asserts generally that the Director improperly imposed a higher standard of proof than a preponderance of the evidence, erroneously applied the law, and did not give "due regard" to the evidence in the record. However, the Petitioner does not support these assertions with specificity as to the record or point to how the Director imposed a higher standard. The Petitioner's unsupported assertions alone are not sufficient to establish error in the Director's decision nor meet her burden of proof to demonstrate eligibility for a national interest waiver. As to the national importance of the proposed endeavor specifically, on appeal the Petitioner primarily asserts and discusses the following as establishing this requirement: her employment experience, the shortage of nurses in the United States, and the fact that nursing is a healthcare profession. The Petitioner also repeats the claim from the RFE response that her proposed company, [redacted] will have a substantial positive economic effect by creating 38 new jobs and paying $4.8 million in salaries by the fifth year. She asserts on appeal that this also establishes the endeavor's national importance.

In determining whether a proposed endeavor has 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 potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor that has national or global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, may have national importance. *Id.* Additionally, an endeavor that is regionally focused may nevertheless have national importance, such as an endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 890.

As to the Petitioner's claim on appeal that her proposed company will have substantial positive economic effects, we note that the Petitioner does not make any arguments to overcome or even address the Director's finding that the plan to establish this company represents a material change to the proposed endeavor.[2] The Petitioner similarly does not address on appeal the fact that the business plan was created and the business entity itself established after the filing of the petition.[3] Ordinarily, when an adverse finding is not addressed by the appellant on appeal, we consider that issue to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998).

Nevertheless, we have reviewed the Petitioner's business plan and conclude that, even were to consider the establishment of this business to be part of the Petitioner's initial proposed endeavor, it does not establish the endeavor's national importance. As the Petitioner states, the business plan projects that the company will employ 38 people and will have paid approximately $4.8 million in wages by year

[2] A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the original evidence in the record. *See id.* at 176.

[3] A petitioner must establish eligibility at the time of filing the petition. 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved when a beneficiary, initially ineligible at the time of filing, becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

five. However, the plan does not provide a credible methodology for its assumed expenses, projected income, or staffing needs. Because the assumptions in the business plan do not have a clear basis, we cannot assess whether the plan's stated projections for job creation and wages paid are credible. Moreover, even were we to assume that the stated projections are credible, the Petitioner has not established that the creation of 38 jobs in five years would have a substantial positive economic effect commensurate with national importance.

Next, the Petitioner emphasizes on appeal her experience and expertise in nursing as establishing the endeavor's national importance. However, evidence of the Petitioner's education, skills, and expertise, including work experience, generally relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the [noncitizen]" and whether she is well-positioned to advance it. *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the Petitioner's specific proposed endeavor—either to be employed as a nurse or to operate a health clinic—has national importance under *Matter of Dhanasar's* first prong. The evidence of the Petitioner's work experience does not elaborate on the Petitioner's specific proposed endeavor nor support its national importance.

Similarly, the Petitioner's emphasis on the "urgent shortage" of nurses in the United States and the importance of improving American healthcare is misplaced. In determining whether a proposed endeavor has 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 potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. The record does not contain evidence that would support the conclusion that the Petitioner's proposed endeavor would lessen the shortage of nurses or increase access to healthcare in the United States on a scale commensurate with national importance.

Finally, the Petitioner asserts on appeal that the language of *Matter of Dhanasar* allows for a regionally focused endeavor to nevertheless establish national importance, and that we should "avoid overemphasis on the geographic breadth" of the proposed endeavor. The Petitioner is correct that the analytical framework introduced in *Matter of Dhanasar* sought to reduce the focus on the geographic impact of an endeavor. *See id.* at 887. However, the Petitioner does not claim that the Director made any specific legal or factual errors related to the regional focus of the Petitioner's proposed endeavor. The Director did not rely on the endeavor's lack of geographic breadth in concluding that it lacks national importance. Rather, the Director concluded that the Petitioner did not offer sufficient information and evidence to establish that the proposed endeavor would have broader implications for her field or that it would offer substantial positive economic effects. Upon de novo review, we agree. Although an endeavor that is regionally focused may have national importance, it must still have a broad impact. *Id.* at 889.

The Petitioner's primary contention on appeal is that the Director applied a higher standard of proof than the preponderance of the evidence standard and that the nature of the occupation and her many years of experience establish the national importance of the proposed endeavor. In support, she largely restates arguments already presented in the RFE response. We have thoroughly reviewed the evidence in the record and conclude that although the Petitioner asserts that her proposed endeavor has national importance, she offers little corroborative evidence or explanation to support these claims. While the Petitioner provided a significant volume of evidence, eligibility for the benefit sought is not

determined by the quantity of evidence alone but also the quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Accordingly, we conclude that the Petitioner has not established the national importance of her proposed endeavor.

In summation, the Petitioner has not established that her proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the second and third prongs of *Dhanasar* but, having found that the evidence does not establish the Petitioner's eligibility under the first prong as to national importance, we will not address those arguments here. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prongs, as well as whether the Petitioner has established eligibility for EB-2 classification. *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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she meets the requisite first prong of the *Dhanasar* framework regarding national importance. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.