U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29063330

Date: DEC. 12, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physical therapist, seeks classification as a member of the professions holding an advanced degree. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska 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. 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 a member of the professions holding an advanced degree 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.

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). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, 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. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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 endeavor as a plan "to apply her skills to specialize in pediatric physical therapy." She stated that she "has plans to operate her own pediatric clinic for special needs children who struggle to function well because of their physical disability." She generally asserted that she "plans to reach special needs children in under served rural and urban areas in the U.S.," without specifying the location of her proposed pediatric clinic. The Petitioner also did not initially elaborate on the number of workers—if any—she would employ in her clinic, the wages she would pay those workers, and other details about the proposed endeavor.

In response to the Director's request for evidence (RFE), the Petitioner submitted, in relevant part, an undated business plan for her proposed physical therapy clinic. The business plan provides a worksite address that matches the address of the Petitioner's residence provided on the Form I-140, Immigrant Petition for Alien Workers. However, the business plan clarifies that the company "will be a mobile clinic that will be operated out of a company owned van . . . by the owner and her husband." The plan elaborates that the Petitioner would "[t]ravel to clients' locations and improve access and ease of services around the [redacted], IL[,] area." Although the Petitioner initially asserted that her proposed endeavor would "specialize in pediatric physical therapy," the business plan submitted in response to the RFE indicates that she would "[i]mprove healthcare to children, elderly and those who cannot afford normal physical therapy services," expanding the scope of the proposed endeavor. The business plan further states that, at some unspecified point "[a]fter a couple years of operations, [the Petitioner] would like to open a physical location as well as continuing to operate the mobile clinic. At this time, [the Petitioner] will likely hire assistants and additional therapists." More specifically, the business plan indicates that the Petitioner would hire an "admin assistant" in the second year of operations, and one additional "physical therapist" in each of the third through fifth years of operations, for a total of five employees. The business plan does not describe the job duties for the respective positions.

The business plan provides confusing information regarding the Petitioner's company's payroll plan. We first note that it indicates that the company would have only one paid employee during the first year of operations, the Petitioner, who would receive an anticipated annual wage of $40,000.

However, the business plan specifically states that the company would be operated initially by two individuals: "the owner and her husband." Therefore, the business plan appears to indicate that the Petitioner would not pay one of the company's two workers during the first year of operations. This raises concerns regarding whether the proposed endeavor would involve other unpaid, underpaid, or unreported workers. We next note that the business plan provides dramatically different wages for the five workers at the time they are hired as compared to the company's fifth year of operations. For example, as noted above, the plan indicates the Petitioner's anticipated first-year wage would be $40,000; however, the plan anticipates an annual wage of $140,000 for the Petitioner in the fifth year of operations. The plan also indicates that the "admin assistant" would be paid $20,000 during the first year of employment but that worker would be paid more than twice that amount, $50,000, in the company's fifth year of operations. In turn, none of the three physical therapists' starting wages match—the plan indicates that they would be paid $25,000, $50,000, and $75,000 in their first year of employment, respectively. The plan further indicates that the two physical therapists hired before the fifth year of operations would receive annual wages of $95,000 in the fifth year, which is a substantial increase over their respective starting wages—in one case nearly quadruple the starting wage. The business plan does not elaborate on why the annual wages would increase so dramatically by the fifth year of operations, nor does it clarify why the three physical therapists' starting wages would differ so substantially despite performing—presumably—identical job duties, given their identical job titles.

Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The extent of the differences between the workers' wages—both for a particular worker from one year to another and when comparing workers with identical job titles and apparently identical job duties—in addition to the business plan's omission of wages for one of the company's two workers for the first year of operations cast doubt on the veracity of the information of the business plan. *See id.* In turn, the doubt cast on the business plan's veracity undermines the reliability and sufficiency of the remaining evidence submitted in support of the Form I-140. *See id.*

The Director acknowledged information in the record, including the business plan the Petitioner submitted in response to the RFE, and determined that the proposed endeavor has substantial merit. However, the Director observed that "the record does not establish that [the Petitioner's] role would impact the physical therapy field and industry more broadly, as opposed to being limited to the patients she serves." The Director also noted that the record does not establish the proposed endeavor "will have significant potential to employ U.S. workers," and other elements of the first *Dhanasar* prong. *See Matter of Dhanasar*, 26 I&N Dec. at 889-90. The Director concluded that "the [P]etitioner has not submitted sufficient evidence to establish her proposed endeavor has national importance." The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs.

On appeal, the Petitioner reasserts that her proposed endeavor will have national importance because her mobile clinic's patients will include "pediatric patients with special needs in the [redacted] area including the outskirts of [redacted]." She also reasserts that her proposed endeavor will have national importance because "she intends to hire additional staff, including other physical therapists, to ensure that her practice will reach more patients, multiplying the impact of her proposed endeavor in the U.S." The Petitioner further asserts that letters of recommendation in the record establish the proposed endeavor has national importance.

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 Matter of 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.

We first note, again, that the doubt cast on the business plan's veracity undermines the reliability and sufficiency of the remaining evidence submitted in support of the Form I-140, for the reasons discussed above. *See Matter of Ho*, 19 I&N Dec. at 591.

The Petitioner's plan to provide "healthcare to children, elderly and those who cannot afford normal physical therapy services" has substantial merit, as the Director acknowledged. However, the first *Dhanasar* prong contains two aspects—that a proposed endeavor "has both substantial merit and national importance." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record does not establish how the Petitioner's physical therapy services, initially "operated out of a company owned van," may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *See id.* We note that the Petitioner's business model of providing physical therapy services out of a van does not appear to be novel either on a national or even local scale because the business plan, discussed above, identifies examples of existing competitors in the [redacted] metropolitan area, including a mobile physical therapy company named [redacted] that appears to provide the type of services the proposed endeavor would provide. Although the Petitioner indicates that her customer base will include "those who cannot afford normal physical therapy services," including those in "the outskirts of [redacted]," the record does not establish the extent—if any—to which the area in which the proposed endeavor would operate may be economically depressed, as a potential persuasive factor. *See id.* at 889-90.

Next, we acknowledge that the business plan indicates that the Petitioner intends to employ herself, three other physical therapists, and one "admin assistant." However, the business plan also provides information that raises concerns and undermines its veracity, such as the number of workers the Petitioner's company would have and the wages the Petitioner's company would pay its workers, as discussed above. Even to the extent that the business plan may be credible, it does not establish how employing five workers—including the Petitioner but apparently excluding her husband, despite specifically identifying him as a worker—would demonstrate "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

The Petitioner also references on appeal letters of recommendation, which she characterizes as demonstrating the proposed endeavor has national importance. The letters of recommendation provide general information about physical therapy, they acknowledge the Petitioner's qualifications, and they opine on the demand for physical therapy in the [redacted] metropolitan area. However, the letters of recommendation do not elaborate on how the "specific endeavor that the [Petitioner] proposes to undertake" may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader

implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

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) (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).

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.