U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11934785

Date: MAY 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a physician and surgeon, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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 Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she 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. . . . [T]he 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 foreign national 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 foreign national. 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 foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, 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 record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] Therefore, we need not consider the alternative claim of exceptional ability. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner entered the United States in February 2018 as a B-2 nonimmigrant visitor. When she filed the petition three months later, the Petitioner did not claim employment or employment authorization in the United States. All of her claimed employment experience was in her native [redacted]. After she filed the petition, she became a research assistant at the [redacted] Clinic of [redacted] Florida. As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.[4]

On Part 6 of the petition form, the Petitioner lists her job title as "Medical Research," but she also provides a job description and Standard Occupational Classification (SOC) Code (29-1071) that correspond to physician assistants. The introductory letter submitted with the petition calls her "a professional working as a Physician and Surgeon," but also refers to "her approximately 6 years of work experience as a Nurse," and states that she will serve the national interest "[i]n her role as a Medical Researcher." The Petitioner claims no prior experience conducting medical research (as opposed to practicing clinical medicine).[5]

Initially, the Petitioner stated that her proposed endeavor was to conduct medical research, but she provided no details about the proposed endeavor. Her initial statement consisted largely of a generic job description for medical researchers. A credential evaluation submitted with the petition indicated that, given "the business environment in [redacted]," "it is critical for U.S. companies doing business or planning to do business there to benefit from the expertise of a Physician and Surgeon such as" the Petitioner. The evaluator states that the Petitioner should have the opportunity "to work for companies doing business in [redacted]," but the Petitioner claims no such plans in her own statement and the record does not otherwise refer to what the evaluator deems the primary reason for approving the waiver.

In response to a request for evidence, the Petitioner significantly revised her stated plans. The Petitioner lists the following goals:

- Attain licensure and board certification in [redacted] surgery;

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] The Petitioner holds a medical degree from the [redacted]
[4] While we may not discuss every document submitted, we have reviewed and considered each one.
[5] We note that graduates of foreign medical schools who intend to practice medicine in the United States are subject to additional admissibility requirements under section 212(a)(5)(B) of the Act, 8 U.S.C. § 1182(a)(5)(B). The approval of a national interest waiver would not exempt a foreign national physician from these admissibility requirements.

- Undertake "a Research Fellowship Program in [redacted] Surgery";
- Practice medicine "in a large hospital" as a surgeon while also conducting research; and
- Acquire a faculty position as "an assistant professor of General Surgery."

The Petitioner's revised statement contains considerably more detail about what she intends to do in the United States, but it also contradicts the initial statement by significantly changing the emphasis from research to clinical practice. The Petitioner maintains that she still seeks to pursue research, but she provides considerably less information about this facet of her intended career. This is an important point because it bears directly on the issue of the national importance of the proposed endeavor. 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. The same reasoning applies here. A surgeon's direct impact is largely limited to the small number of patients she treats. The Petitioner shows that [redacted] causes over 50,000 deaths in the United States each year, but one doctor's clinical practice will not have a significant effect on those numbers. A faculty position at a medical school, likewise, has a limited reach because a professor can only instruct a finite number of students, each of whom is also under the tutelage of several other instructors.

Medical research can be of national importance through publication and dissemination. But to qualify for the waiver, the Petitioner must do more than show that medical research is important and that she intends to pursue that research while also continuing to practice medicine. Such generalities provide no information about the research she would undertake, or how much time she would be able to devote to research while also treating patients and teaching medical students. A vaguely-stated intention to conduct medical research, to which the Petitioner later added detailed plans regarding clinical practice that are more in keeping with her education and experience, does not suffice to establish that her proposed endeavor has national importance.

The Petitioner has submitted several reference letters, all emphasizing her clinical work as a physician and surgeon rather than expertise or significant experience as a researcher. For example, an October 2019 letter from the medical director of [redacted] Hospital lists 18 tasks the Petitioner performed there from March 2013 to October 2018. One task ambiguously refers to "[s]cientific interest in the publication of papers in congresses and international publication," but the letter does not indicate that the Petitioner engaged in focused research activity (as opposed to routine reporting of clinical outcomes from patient treatment). The Petitioner has produced some papers and conference presentations, but mostly while she was a student, and many of these projects appear to be case studies, in which physicians report the details and outcome of patient treatment.

The Petitioner also co-authored a textbook chapter about [redacted] The submitted excerpt is in Portuguese with no English translation, so we can make no conclusions about its contents. *See* 8 C.F.R. § 103.3(b)(3), which requires the submission of certified English translations of foreign-language documents.

The Director concluded that the Petitioner did not establish the national importance of her proposed endeavor. On appeal, the Petitioner asserts that her "endeavor aims to actively apply her medical and public health expertise in the research and development of new medical breakthroughs . . . while helping in the treatment of patients." As explained above, the Petitioner has provided minimal information about

her planned research endeavor, and has made conflicting claims about how the research work will predominate in her future work.

Also, the treatment of individual patients does not rise to the level of national importance. The *collective* importance of a given profession is not grounds for a national interest waiver; Congress could have created blanket waivers for particular occupations, but did not do so. 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 "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The vague ambition to "develop . . . new medical breakthroughs" does not satisfy this prong of the *Dhanasar* test.

Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining *Dhanasar* prongs. *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).

Nevertheless, one point bears addressing here. The Petitioner asserts that there is a shortage of physicians and medical researchers in the United States, and she submits a number of published articles advocating increased immigration in order to address those shortages. This argument is not persuasive.

The Petitioner has acknowledged that any medical research she may conduct would be through an employer, and therefore involving an employer in the immigration process does not represent an unreasonable burden that prevents the Petitioner from benefiting the United States through her research. Without such an employer, it is not evident that the Petitioner would be able to engage in research at all. Granting the Petitioner a national interest waiver now, in the hopes that she would one day secure employment as a researcher with an as-yet-unknown employer, would be highly speculative.

With regard to *physician* shortages, Congress established separate waiver provisions at section 203(b)(2)(B)(ii) of the Act for physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. USCIS adjudicates those petitions outside the *Dhanasar* framework under the regulations at 8 C.F.R. § 204.12, which outline additional evidentiary requirements that this Petitioner has not addressed or met. Therefore, we decline to address the assertion that a shortage of physicians entitles the Petitioner to a waiver under the *Dhanasar* standard.

The record portrays the Petitioner as a dedicated, diligent, and competent physician and surgeon, but these traits do not exempt her from the job offer requirement that, by law, typically applies to the immigrant classification that she seeks.

III. CONCLUSION

Because the Petitioner has not met the required first prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.