U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 11271472

Date: SEP. 13, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the Petitioner is not qualified for classification as a member of the professions holding an advanced degree, and that he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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. –
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> (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 –
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> (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).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 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)

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *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).

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.[3]

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

To show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presents a bachelor's degree in oriental medicine with academic record, and an educational evaluation stating that his degree is the foreign equivalent of a U.S. baccalaureate degree in medical science. He asserts that he has the requisite five years of progressive post-baccalaureate experience through self-employment as a head researcher at [redacted] [the clinic], in [redacted] South Korea, which he owned and operated since 1995. The Petitioner indicates that he has been employed full-time at the clinic since 1995 and describes the duties that he performs at the clinic in the initially submitted Form ETA-750, as follows:

> Oriental medicine. Pain diseases (acute/chronic pack pain, senile degenerative joint disease, industrial disaster associated musculoskeletal disease, sports damage musculoskeletal disease, pain induced by traffic accidents, etc.) Obesity treatment, seborrheic dermatitis, scalp disease, gynecological disease, internal medicine disease.

The Director informed the Petitioner in his request for evidence (RFE) that USCIS was unable to verify the existence of this business during a search of publicly available records, and requested the submission of evidence establishing the physical location of the clinic and its business operations, as well as other evidence of his self-employment as a head researcher.[4] The Director ultimately denied the petition, in part, concluding that the submitted evidence of the Petitioner's business operations was insufficient to establish that he gained the requisite work experience through self-employment with the clinic. We agree. Considering the totality of the evidence, including evidence submitted on appeal, the record does not substantiate that the Petitioner obtained at least five years of progressive post-baccalaureate experience in the specialty through self-employment at his clinic.[5]

To begin with, the Petitioner has not sufficiently established the clinic's business location. The Director's denial highlighted inconsistencies in the record regarding the location of the clinic, noting

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

[4] In signing the petition in March 2019, the Petitioner "recognize[d] the authority of USCIS to conduct audits of [his] petition using publicly available open source information," and also recognize[d] that any supporting evidence submitted in support of [his] petition may be verified by USCIS through any means determined appropriate by USCIS. . ." *See* Part 8 of Form I-140 petition.

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

for instance, that the Petitioner provided a letter from Dr. S-L- who asserts that the clinic is located in the [redacted] in [redacted] when the Petitioner's 1995 business registration indicates the business is located in [redacted] On appeal, he resubmits a 2016 real estate purchase agreement for land and a building at a third location in [redacted] but he does not explain the relevance of this real estate purchase, e.g., whether it is evidence of where he currently operates the clinic.

The record also reflects that the Petitioner's spouse purchased land and a multi-unit building in 2011 in [redacted] In 2016, a portion of that property which included a "[h]all of the elderly, resident common facility, fitness center, golf driving range, emergency room, MDF room, library, guest room, waterside café, [and an] underground parking lot" was transferred into the Petitioner's name. While this evidence suggests that the Petitioner and his spouse own commercial real estate, he has not provided evidence sufficient to show that the clinic is operating at this [redacted] location, or that he is employed there. Further, the Petitioner does not provide an explanation for the variances regarding the location of the clinic in the evidence presented in the record. Establishing the clinic's existence (and the nature of its on-going business operations) is important because the Petitioner contends that he obtained the requisite five years of progressive post-baccalaureate experience through self-employment with this business. The Petitioner must resolve the inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the Petitioner's [evidence] may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The record also lacks sufficient evidence to substantiate the on-going business operations of the clinic. For example, the Director observed in the denial that while the Petitioner's tax certificates report his personal income, but they do not identify the income's source. On appeal, the Petitioner references the previously submitted tax certificates as evidence "which demonstrate[s] that my business is still operating," but he does not address the Director's concerns that the tax certificates do not establish that his income comes from his self-employment at the clinic. The Petitioner has provided other evidence regarding his personal assets, such as certificates of deposit, valuations of his personal life insurance, and documents showing the purchase of real property. However, the Petitioner has not explained how his assets demonstrate that he has the requisite experience. *Matter of Ho*, 19 I&N Dec. at 591-92.

Turning to the reference letters submitted in support of the petition, we note that although the authors offer general praise concerning the Petitioner's research in the oriental medicine field and his clinical practice acumen, the letters do not persuasively establish the Petitioner's self-employment at the clinic. For instance, the aforementioned letter from Dr. S-L states that the Petitioner "is dedicated to his clinical practice," (and as previously discussed, he indicates that the clinic was located in the [redacted] in [redacted]" not [redacted] as asserted by the Petitioner).[6] Dr. T-Y- explains in his letter that he has "consulted with [the Petitioner] who is interested in the clinical application of oriental medical drugs and presented solutions to various queries." While the authors generally reference the Petitioner's activities in the field of oriental medicine, and allude to his clinical medical practice, the letters do not provide sufficient detail regarding his self-employment at the clinic. The submission of

[6] *Id.*

reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.,* 745 F. Supp. 9, 15 (D.D.C. 1990). We conclude that the Petitioner's reliance on these letters is misplaced.

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) specifies that the evidence of progressive experience must be "in the form of letters from current or former employer(s)." 8 C.F.R. § 204.5(g) provides "[i]f such evidence is unavailable, other documentation relating to the alien's experience or training will be considered." As discussed, the letters in the record contain inconsistencies that undermine the credibility of the writer, and the letters do not sufficiently demonstrate the Petitioner's experience or training. Without further information and evidence, the Petitioner has not established that he has at least five years of progressive post-baccalaureate experience in the field of oriental medicine to constitute the equivalent to an advanced degree in that specialty. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).[7] Accordingly, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.[8]

B. National Interest Waiver

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 Director concluded in his denial that the Petitioner's proposed endeavor, the practice of oriental medicine, has substantial merit. However, he also concluded that the Petitioner did not sufficiently establish the national importance of his endeavor within the first prong of the *Dhanasar* framework.

We note that since the Petitioner does not challenge the Director's determination regarding the national importance of his endeavor within *Dhanasar's* first prong, we consider that issue waived on appeal. When an appellant fails to properly challenge one of the grounds upon which the Director based his/her overall determination, the filing party has abandoned any challenge of that ground, and it follows that the Director's adverse determination will be affirmed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

Nonetheless, regarding the Petitioner's claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner's statements reflect his intention to work in the oriental medicine field in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor 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. *See Dhanasar*, 26 I&N

[7] It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

[8] Although the Director did not address whether the Petitioner qualifies as an individual of exceptional ability in his decision, we note that the Petitioner's original filing and the evidence provided thereafter was limited to his claim to be a member of the professions holding an advanced degree.

Dec. at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the healthcare industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States.

In summary, because the Petitioner has waived the issue regarding the national importance of his endeavor within *Dhanasar's* first prong, (and also because the documentation in the record does not establish the national importance of his 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 his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

## III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Furthermore, as the Petitioner has waived *Dhanarsar*'s first prong, we conclude that he has not established he is eligible 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.