U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21599698

Date: JUL. 26, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a medical administrator, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification and that her proposed endeavor has substantial merit and national importance. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that she is well positioned to advance the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts her eligibility, arguing that the Director did not provide a sufficient explanation and justification for the denial. 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. LEGAL FRAMEWORK

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.
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> (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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). 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). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree.[1] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

A. Substantial Merit and National Importance

The Petitioner stated on her Form I-140 that she intends to "determine and formulate policies and provide overall direction of companies or private and public sector organizations within guidelines." Although she provided a summary of her qualifications, her initial filing contained little other information concerning her proposed endeavor. The Director issued a request for evidence (RFE), summarizing her proposed endeavor as intending to "work as a medical administrator/dental surgeon in the field of dentistry."

In addition, the RFE informed the Petitioner that, among other deficiencies, the evidence did not establish that the Petitioner is well positioned to advance her proposed endeavor. The Director did not request any evidence concerning the substantial merit or national importance of the proposed endeavor, nor did the Director specifically state in the RFE that the Petitioner had met this element of the Dhanasar framework. In her RFE response, the Petitioner provided additional information concerning her proposed endeavor. To establish eligibility under the Dhanasar framework, she submitted evidence including, but not limited to, a professional plan and statement, reference letters, and articles concerning the importance of dentistry and the inequities of dental care in the United States.

Regarding her proposed endeavor, the Petitioner stated that her plan is to continue her career as a business administrator within the dental health field. Using her managerial experience, she intends to

[1] The evidence supports a finding that the Petitioner possesses the foreign equivalent of a bachelor's degree in accounting, as well as a subsequently earned foreign dental surgeon degree. While the evidence does not establish that she is qualified to practice dentistry in the United States, it does establish that she meets the underlying EB-2 classification as an advanced degree professional.

assist in opening a polyclinic following the business structure of clinics she claimed to own in Brazil. She explained that her business structure includes complete medical care under one management function and that she will offer highly specialized yet affordable care services. She further stated that the structure includes a patient-driven business culture with cost-saving initiatives that mitigate clinical costs. Starting with a pilot clinic that utilizes her experimental business model, she will stimulate the opening of similar businesses across the nation. As such, she "will facilitate the access to basic dental and healthcare in the United States." In addition, she stated that "[b]y promoting her professional plan, with the help of investors and healthcare companies, [she] will improve and enhance the healthcare industry." In her professional plan and statement, she explained that she will develop dental clinics with a modernistic management approach so as to promote accessible and all-encompassing dental and medical care. Finally, she plans to further her education in United States by pursuing the National Board Dental Examination for the Advanced Standing Program and a specialization in healthcare administration. She explained that by furthering her own education and knowledge in managerial aspects of the dental industry, she will more capably administer the integrated healthcare clinics she plans to establish.

After reviewing the Petitioner's RFE response, the Director concluded that the evidence established that the proposed endeavor has substantial merit and national importance, but that it was insufficient to establish that the Petitioner is well positioned to advance her endeavor. Accordingly, the Director determined that the evidence did not support a finding that waiving the requirements of a job offer and labor certification would be beneficial to the United States. On appeal, the Petitioner argues that the Director failed to provide analysis for her ineligibility under Dhanasar and offered conclusory statements instead. In support, she submits a letter from one of her dental customers who expresses satisfaction with the quality of the Petitioner's care, and she also resubmits a previously provided reference letter.

While we do not discuss each piece of evidence individually, we have reviewed and considered each one. In our de novo review of the record, we conclude that the Petitioner has not established the national importance of her proposed endeavor. 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 evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement by looking to evidence that documents the "potential prospective impact" of her work. To illustrate, "[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.

The Petitioner asserted that her proposed endeavor will positively impact and improve the U.S. economy, employ Americans, as well as promote the accessibility and quality of dental and medical care in the United States. Specifically, the Petitioner claimed that her proposed endeavor "motivates the improvement of the healthcare sector, allowing more people to access such relevant services" and that her work in the United States "will translate into benefits to communities, which will in turn contribute to social progress and the national economy." In support, she notes that studies show that the United States has a concerning lack of dental coverage for low-income populations, resulting in a health disparity in the nation. She stated that her work presents substantial and beneficial social implications and that the ripple effects of her proposed endeavor will positively impact the health

sector and the economy. She expects that her proposed endeavor will prioritize dental care services, promote entrepreneurial and economic improvement, and mitigate troubling nationwide healthcare patterns.

The Petitioner submitted numerous reference letters in support of her eligibility for a national interest waiver. We acknowledge that the authors of the letters praise the Petitioner's personal and professional achievements and qualifications. However, most authors do not discuss the Petitioner's proposed endeavor or meaningfully demonstrate how it would have national importance. For instance, [redacted] describes an important [redacted] treatment technique that the Petitioner used to reduce the number of sessions required for a root canal and to facilitate the successful adherence of expensive dental prosthetics. However, he does not explain how this technique impacts the proposed endeavor or how the United States could benefit from it. He likewise does not offer any detail or explanation to support his claims that the Petitioner was one of the first to use a particular technique. Although he states that the Petitioner used an innovative procedure, he does not suggest that the Petitioner developed the procedure. Further, [redacted] does not claim that the innovative technique is different from or superior to that which is already offered in the United States. Additionally, although he claims that the Petitioner's skills are unique and extraordinary and that her practices are well-known among dentists specialized in fixed dental prostheses, he does not offer any specific examples or corroborating evidence to support such assertions.

[redacted] claims that the Petitioner has expertise and skill in dental care, but he does not explain how this would impact the United States at a level commensurate with national importance. To illustrate, [redacted] claims the Petitioner was the first female in Brazil to conduct over one thousand successful teeth whitening treatments within the first year of using a laser technique, but he does not suggest that such an activity is part of the proposed endeavor or that it would be nationally important. While [redacted] wrote that the Petitioner's "unique skills and vast experience substantially contribute to the success of her business" and will also "substantially contribute to the stream of the health care business and expansion of economic growth for the United States," he does not provide sufficient detail or explanation about how this would occur.

[redacted] the president of a Brazilian insurance company, claimed to have cited some of the Petitioner's methods in "[his] own work," but he offers no explanation of what work he refers to or what methods he cited. Nor does he suggest that the Petitioner's methods will benefit the United States on a nationally important level.

The evidence provided does not suggest that the Petitioner created new business and dental techniques or otherwise impacted the fields of healthcare or business on a nationally important scale. Even if she had, this would not explain how the United States would benefit from her work on a level rising to national importance. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (expert opinion testimony does not necessarily purport to be evidence as to "fact"). Overall, the reference letters do not sufficiently address the proposed endeavor or explain why it has national importance.

The Petitioner submitted various media articles that discuss the importance of dental care, the unequal access to it, the expense of it, as well as how immigrants and immigrant entrepreneurs benefit the United States. While we acknowledge dentistry and dental care is important, as are immigrants and entrepreneurialism, none of the articles discuss the Petitioner's specific proposed endeavor. Moreover, 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.

We conclude that the record does not contain a sufficient explanation of how her healthcare clinic(s) will be able to offer high quality care that is also affordable. Her plan does not include what specific cost saving measures she will utilize or how her business practices are unique or better than those found in the United States. While she may have experience in business administration and dental care in another country, she has not demonstrated how she will manage her clinic in the United States, a country which operates under a vastly different health care system. Even if the evidence demonstrated how her dental and business practices would offer affordable high-quality care for low-income populations, this would not explain how her proposed endeavor would operate on a nationally important scale.

Similarly, while any basic economic activity has the potential to positively impact the economy, the Petitioner has not demonstrated how the economic activity her proposed endeavor generates will rise to the level of affecting the U.S. economy. For example, the Petitioner does not suggest or offer a basis to conclude that the "ripple effects" of her proposed endeavor will affect the U.S. gross domestic product or tax revenues, nor does she offer an estimate of how many and which jobs she will create. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's proposed endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. See id. at 890.

The Petitioner does suggest that her dental procedures and techniques are unavailable in the United States or that the quality of her of care is better than that which is already offered in the United States. Even if she had demonstrated this, it would not establish how her procedures and techniques would be available to individual dentists and doctors or to the public at large. 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, we conclude that while individual patients may benefit from her clinics' medical care, she has not offered a sufficient explanation for how this individual benefit rises to the level of national importance or will impact the field more broadly. In addition, the record does not reflect that the Petitioner's practices, models, methods, or approaches affected the field of dentistry or healthcare management as a whole such that it can be concluded that her proposed endeavor will have national importance. Finally, while the Petitioner's plan to pursue additional education in the United States is a worthy goal, it is not apparent how the benefit of this education would have national importance to the United States.

Although the Petitioner asserted that her proposed endeavor has national importance, she offered little corroborative evidence or explanation to support her claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369,

376 (AAO 2010). Accordingly, we conclude that the Petitioner has not established the national importance of her proposed endeavor.

B. Well Positioned to Advance the Proposed Endeavor

As the foregoing analysis explains, the Petitioner has not demonstrated the national importance of her proposed endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. However, because the Director denied the petition based upon the second Dhanasar prong and not the first, we offer additional analysis of the Petitioner's eligibility under the second Dhanasar prong.

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner offers numerous examples of her past achievements in order to suggest that she is well positioned to advance her proposed endeavor. She explained that she utilizes her business and medical procedures to the benefit of clinics she owns in Brazil. However, as explained previously, the record does not contain a detailed explanation of what these procedures are or how they differ from those already used in the United States. Overall, we read that the Petitioner has "experimental models," a "modernistic management approach," "unique business practices," "an essentially important technique of real significance to the dental field," "a calculated approach to business management," a "unique approach to business and finance," and that she acquired "innovative dental methods." However, the Petitioner does not explain these claims or offer sufficient corroborative detail to support them. Nor does the record support a finding that even if she provided such benefits within her own clinics in Brazil, that such methods would be applicable in the United States. For instance, she offers the use of electronic medical records as an example of her "modern management tools." However, the Petitioner does not appear to recognize that this is already a prevalent practice in the United States and mandatory in some circumstances.

Returning to the Petitioner's reference letters, we note that [redacted] claims the Petitioner has an innovative business approach that results in increased revenue and margins for her company. Nevertheless, he does not explain what her innovative business approach is or how it functions within the proposed endeavor. As discussed above, [redacted] claims the Petitioner was the first female in Brazil to conduct over one thousand successful teeth whitening treatments within the first year of using a laser technique. Even if true, there is nothing in the record to suggest that as a part of her proposed endeavor, the Petitioner would replicate this achievement with medically necessary dental procedures.

We acknowledge that [redacted] believes that "her innovative, unique and leading methodology developed in her own business can be duplicated in the U.S." However, he has not explained what the Petitioner's methodology is or how she will duplicate it in carrying out her proposed endeavor. [redacted] stated that the Petitioner has unique skills and substantial experience that will contribute to the improvement of the healthcare business and economy, but the letter does not provide any concrete examples of how this would occur as a result of the Petitioner's proposed endeavor in the United States.

Similarly, [redacted] stated that the Petitioner's work is known as an original and new approach to managing medical and dental clinics and that such an approach significantly improves care. As with the other authors, he does not offer sufficient corroborating detail about what that approach is, what makes her management new or original, or how this positions her well to advance

her proposed endeavor in the United States. Further, although he claims to have cited some of her methods in the clinic where he works, he has not offered any specific details about the circumstances under which that occurred.

The Petitioner suggested that she will use investors, but she has not named any investors interested in her proposed endeavor nor has she offered an alternative explanation for how she will fund her pilot clinic, let alone expand her business. She has not identified where the pilot clinic will be, how she will recruit and employ U.S. workers, what jobs she will recruit for, or how she will pay employees. We do not know what techniques and procedures she will employ that will enable low-income populations to access quality care. To illustrate, if the Petitioner accepts insurance at her clinics, she has not explained how this will affect uninsured populations. Alternatively, if she plans to not accept insurance, she has not explained how she will be able to afford to subsidize the services for those who cannot afford them. Further, as she has not addressed where her clinic(s) will be located, it is not apparent how low-income populations will have physical access to the clinic(s). The record provides little indication of any concrete steps the Petitioner has taken towards her proposed endeavor, nor do we have evidence that she has the proper medical and business licenses to begin her proposed endeavor.

While we acknowledge the Petitioner's evidence and arguments, she has not overcome the Director's conclusions that the Petitioner has not established eligibility under this prong. Accordingly, we conclude that the record does not support a finding that the Petitioner is well positioned to advance her proposed endeavor.

III. CONCLUSION

The documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Furthermore, the record does not establish that the Petitioner is well positioned to advance her endeavor. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the third prong outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the third Dhanasar prong. 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).

As the Petitioner has not met the requisite first and second prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.