U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467454

Date: SEP. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category as a member of the professions holding an "advanced degree" and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if she establishes that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested immigrant visa category as an advanced degree professional and that her proposed endeavor has "substantial merit." But the Director concluded that the Petitioner did not demonstrate the claimed "national importance" of her venture or that it meets other requirements for a national interest waiver. On appeal, the Petitioner contends that the Director's decision contains both legal and factual errors.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not demonstrated that her proposed undertaking has national importance. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the requested EB-2 immigrant visa category, either as advanced degree professionals or as noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category generally requires prospective U.S. employers to seek noncitizens' services and obtain DOL certifications to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D).[1] To avoid the job offer/labor certification

[1] Recognizing a nursing shortage in the United States, DOL has a shorter, less rigorous labor certification process for foreign nurses. *See* 20 C.F.R. § 656.5(a)(3)(ii) (listing the occupation of "professional nurse" on Schedule A). But that process still requires foreign nurses to have job offers from prospective, U.S. employers. *See* 20 C.F.R. § 656.15(a).

requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. So, we have established a framework for adjudicating these waiver requests. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The Petitioner, a Brazilian native and citizen, has a bachelor's degree in nursing and more than 12 years of experience in the field. Her experience includes working in hospital care units for teenagers, children, and newborns. She seeks to continue her nursing activities in the United States by working for an as-yet-undetermined healthcare facility. She states that she would performing a combination of administrative and clinical duties. After the petition's filing, she received a U.S. nursing license.

A. Advanced Degree Professional

The record documents the Petitioner's possession of a Brazilian degree equating to a U.S. bachelor's degree in nursing. She also demonstrated that she has more than five years of progressive, post-baccalaureate experience in the field. We therefore agree with the Director that she qualifies for the requested EB-2 category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include a bachelor's degree followed by at least five years of progressive experience in the specialty).

B. Substantial Merit

The record indicates that the Petitioner's proposed endeavor could help improve U.S. public health and alleviate the country's nursing shortage. We therefore also agree with the Director that her proposed undertaking has substantial merit.

C. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on a petitioner's particular proposal, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* Even ventures focusing on one geographic area of the United States may have national importance. "An 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 Director found that the Petitioner did not demonstrate that her specific endeavor would have national implications for the economy or the healthcare field. On appeal, the Petitioner calls that conclusion "inaccurate." She contends that her nursing activities will promote the health of Americans, advocate for healthcare, educate patients and the public on preventing illnesses and injuries, and provide care to critical patients. She notes that healthcare is a major and growing contributor to the U.S. gross domestic product and that the country needs nurses both now and in the future. She argues that her venture will improve patient outcomes, train healthcare workers, and enhance healthcare management and societal welfare.

We agree that the healthcare field provides all the national benefits the Petitioner states. But, when determining national importance for national interest waiver purposes, USCIS must focus on the Petitioner's "specific endeavor." *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake.") Thus, while the healthcare field significantly contributes to the U.S. economy, the Petitioner has not demonstrated that her *specific endeavor* would have national economic implications. Similarly, while the healthcare field significantly contributes to U.S. public health, she has not established that her *specific undertaking* would have national health implications.

In *Dhanasar*, we found that a proposal to teach in the science, technology, engineering, and math ("STEM") disciplines at a university had substantial merit regarding U.S. educational interests. *Matter of Dhanasar*, 26 I&N Dec. at 893. But we concluded that the record did not demonstrate the proposal's national importance because of insufficient evidence that the petitioner "would be engaged in activities that would impact the field of STEM education more broadly." *Id.* As in *Dhanasar*, the Petitioner has demonstrated that her proposed nursing activities have substantial merit. But she has not established that her specific endeavor would improve healthcare, or boost the economy, broadly enough to be deemed nationally important.

Also, as the Director found, the Petitioner's proposed endeavor is vague because her future U.S. position has yet to be determined. The absence of evidence regarding her specific future duties hinders her ability to establish the venture's claimed national importance.

For the foregoing reasons, the Petitioner has not demonstrated that her proposed endeavor has national importance. We will therefore affirm the petition's denial.

Our conclusion regarding the national importance of the Petitioner's venture resolves this appeal. We therefore decline to reach and hereby reserve her appellate arguments regarding her positioning to advance her endeavor and the purported benefits to the country of waiving U.S.-worker protections. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant was otherwise ineligible for relief).

ORDER: The appeal is dismissed.