U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29378561

Date: FEB. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, 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 Texas Service Center denied the petition, concluding 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 did not directly state that the Petitioner qualifies as a member of the professions holding an advanced degree; however, the Director acknowledged that the Petitioner "holds the equivalent to a U.S. baccalaureate degree followed by at least five years of progressive experience in the specialty, as of the priority date," as required by 8 C.F.R. § 204.5(k)(2). 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.

The Petitioner described the endeavor as a plan to continue her nursing career, working for healthcare facilities in the United States. The Director summarized information in the record and acknowledged that "the [Petitioner's] endeavor has substantial merit." However, the Director observed that "the [Petitioner] has not shown her proposed endeavor in this case stands to sufficiently extend beyond the individuals [she] would serve, to impact the nursing industry or field more broadly." The Director also noted that "[the Petitioner] has not indicated how her [endeavor's] economic impact would have significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area." The Director concluded that the record does not establish that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and, moreover, that it does not satisfy the second and third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner reasserts that she plans to work as a nurse in the state of Florida, she reiterates generalized information about nurses, and she references:

> numerous market research, articles and reports that underscore the importance of preventive health care; the crisis in the health care system for the elderly; the need and importance of caring for the growing elderly population across the country as a way to generate several positive effects on well-being and health in the United States.

The Petitioner also asserts that her "plan to work as a nurse . . . could potentially have an impact on the proper and intended operation of the entire healthcare system, alleviating a severe and growing staffing deficit in the field of medicine."

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.

The Petitioner's discussion of publications including "market research, articles, and reports" and generalized information about nurses relate to the merit and importance of the industry, field, or profession in which she will work; however, as noted above, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. The various publications in the record, referenced by the Petitioner on appeal, do not discuss the Petitioner, the specific endeavor she proposes to undertake, and how the specific endeavor the Petitioner proposes to undertake may have "national or even global implications within a particular field" or otherwise have broader implications beyond her current or potential employer(s), patient(s), and coworker(s). *Id.* at 889-90. Therefore, the referenced publications and generalized information about nurses do not inform whether the proposed endeavor may have national importance. *See id.*

Although the Petitioner asserts that her plan to continue her nursing career "could potentially have an impact on the proper and intended operation of the entire healthcare system, alleviating a severe and growing staffing deficit in the field of medicine," she does not substantiate her claims. "[T]he entire healthcare system" is vast; however, the record does not establish how the Petitioner's proposed endeavor to continue her individual nursing career, among all other nurses in the United States continuing their careers, may have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" contemplated by *Dhanasar*. *Id.* at 889-90. In turn, the record does not support the Petitioner's claim that her individual work as a nurse at one or more healthcare facilities in the state of Florida will "alleviat[e] a severe and growing staffing deficit in the field of medicine," a field which we note is even broader than the field of nursing. Likewise, the record does not establish how the Petitioner's proposed endeavor to work as a nurse at one or more healthcare facility at some unspecified location(s), may have "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.