U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31034341

Date: MAY 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental surgeon/entrepreneur, seeks employment-based second preference (EB-2) 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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 because the Petitioner did not establish that her proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the Dhanasar framework. See Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). Because this identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs.[1]

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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. at 889, provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship

[1] 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).

and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

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

The Petitioner, a dental surgeon/entrepreneur, states that she has over 15 years of experience working as a dental surgeon. She plans to develop and expand her "own business in the nation" by opening the [redacted] in South Carolina. Her clinic will "be focused on offering dentistry services with a personalized treatment plan in a friendly atmosphere."

With her initial filing, the Petitioner submitted evidence of her education and experience, a "definitive statement," a letter from counsel, a business plan, recommendation and support letters, industry reports, and articles.

Following initial review, the Director issued a Request for Evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the underlying EB-2 classification and for the national interest waiver.[3] The Petitioner's RFE response included a letter from counsel, a business plan, an updated resume, and evidence of her education and experience.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had established that she was eligible for EB-2 classification as an advanced degree professional. Next, the Director concluded that the Petitioner did not demonstrate the national importance of her proposed endeavor or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of labor certification. However, the Director determined that the Petitioner was well positioned to advance the proposed endeavor.

Specifically, the Director determined that the Petitioner had not demonstrated how one dentist would have broad implications that rise to the level of national importance, trigger substantial positive economic impacts, or would have a significant potential of creating jobs for U.S. workers. Regarding the Petitioner's contention that her proposed endeavor would provide jobs for 28 workers, and generate substantial wages paid, the Director concluded that the proffered numbers meant that each worker would on average receive $34,285.71 per year. Thus, the Director concluded that the record did not establish how paying 28 workers in South Carolina an average wage of $34,285.71 would have substantial positive economic effects to reach the level of national importance. Moreover, the Director

[2] See also Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] The Director noted in the RFE that the Petitioner's proposed endeavor had substantial merit.

determined that the Petitioner did not establish the basis for the projected numbers in the business plan. The Director also noted that the Petitioner cited to her background and qualifications in attempt to demonstrate her proposed endeavor's national importance, but that those factors related to the second Dhanasar prong.[4]

In addition, the Director determined that the general articles and industry reports did not specifically address the Petitioner's proposed endeavor. With regards to the expert opinion, the Director determined that the writer's assertions that the Petitioner met all three prongs of the Dhanasar framework were unsupported by the evidence. Finally, the Director concluded that the evidence did not demonstrate that the proposed endeavor would broadly enhance societal welfare, cultural enrichment, or artistic enrichment.

In counsel's cover letter submitted in response to the RFE, the Petitioner contends that the proposed endeavor is "national in scope, as her professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects" on "general dentistry, oral rehabilitation, preventative health care, restorative dental care, cosmetic dentistry, dental implants, [and] periodontic specialist [sic]." Further, counsel argues that the Petitioner's proposed endeavor "impacts nationally important matters, and the national economy" by "offering economic convenience and agility, as he [sic] is able secure the success of small and medium-sized U.S. companies." Additionally, counsel argues that the endeavor will "[p]romot[e] growth and expansion and driving [sic] change with innovation" and will "[s]timulat[e] the domestic job market" leading to the "generation of new jobs for American workers."

On appeal, the Petitioner argues that the Director's decision "imposed novel substantive and evidentiary requirements." Further, the Petitioner contends that the Director "did not apply the proper standard of proof…instead imposing a stricter standard, and erroneously applied the law." Last, the Petitioner argues that the Director did not give "due regard" to various pieces of evidence.

Regarding the Petitioner's argument that the Director's decision "imposed novel substantive and evidentiary requirements," the Petitioner asserts that she submitted sufficient evidence to meet the regulatory and category standards. Therefore, she asserts that the Director did not properly apply the correct standard of proof. Although the evidentiary standard in immigration proceedings is preponderance of the evidence, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. Matter of Y-B-, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); also see the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. This burden requires that a petitioner to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

[4] *Dhanasar's* second prong, not the first, focuses on whether a noncitizen is well positioned to advance their proposed endeavor.

We agree with the Petitioner that the correct standard of proof in her case is preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010). In putting forward the argument that the Director did not correctly apply this standard, the Petitioner does not explain exactly how the standard was wrongly applied. The essence of the Petitioner's argument seems to be that because the Director did not determine that the Petitioner's proposed endeavor was of national importance, the Director misapplied the standard. This argument does not show how the Director erred but instead relies on unsubstantiated assertions. See, e.g., Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). We conclude that the evidence does not support Petitioner's argument regarding the asserted misapplication of the standard of proof.

Regarding the national importance component of *Dhanasar's* first prong, we consider the proposed endeavor's potential prospective impact in determining whether it has national importance. Matter of Dhanasar, 26 I&N Dec. at 889. The relevant question is not the importance of the field, 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 Id. In Dhanasar, we further 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 stated that "[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 asserts that she "firmly believe[s] that [her] proposed endeavor in the United States holds national importance." She further contends that her proposed endeavor, establishing the [redacted] "is not just a run-of-the-mill business venture." Rather, Petitioner's endeavor "promises to have far-reaching positive impacts on both the local and national levels." Additionally, the Petitioner states that "through her commitment to training and staying updated with modern dental technologies and techniques, [she] will contribute significantly to addressing the ongoing dentist shortage in the United States." She argues that her "commitment to training and staying updated" has "broader implications for the dental profession, the healthcare system, and the welfare of the American public." The Petitioner has not provided evidence to substantiate her assertions that her "commitment to training and staying updated" would have an impact beyond herself and the clients she plans to serve. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that her proposed endeavor would have broader implications in the field of dental surgery on the U.S. economy beyond the clients benefiting from the Petitioner's services. Matter of Dhanasar, 26 I&N Dec. at 893.

Further, the Petitioner argues that her business plan "clearly outlines the creation of 28 news job opportunities for U.S. workers within the first five years." She argues that her endeavor will "enhance societal welfare by providing accessible and affordable dental to underserved communities." On appeal, the Petitioner does not contest the Director's determination that the projected average annual wage per worker would be $34,285.71 per year. Nor does the Petitioner explain how the record demonstrates that paying 28 workers in South Carolina $34,285.71 shows that her endeavor would have substantial positive economic effects. We agree with the Director's determination that the Petitioner's projections are unsupported by the record. Even if we accepted the projections, which we

do not, the Petitioner has not demonstrated how paying 28 workers on average $34,285.71 indicates that her proposed endeavor reaches the level of national importance.

The Petitioner also argues on appeal that her proposed endeavor "will enhance societal welfare by providing accessible and affordable dental care to underserved communities." In her "Definitive Statement," she contends that her business "is to be headquartered in South Carolina and is set to serve HUBZones areas."[5] Further, the Petitioner's business plan states that in the first year the [redacted] will establish its headquarters in [redacted]' followed by additional branches in [redacted] in the following years. While the Petitioner correctly points out that all three of her business' prospective locations will be in Small Business Administration (SBA) HUBZones, she does not put forward evidence of her business' participation in the SBA's HUBZone program. The record does not contain other evidence demonstrating that the Petitioner's proposed endeavor will benefit underserved communities. Thus, we are unable to conclude that her endeavor will have substantial positive economic effects, particularly in an economically depressed area, to reach the level of national importance.

Finally, the Petitioner contends that the expert opinion she submitted from Dr. [redacted] is "both relevant and credible" and "aligns with [her] claims regarding the national importance of her endeavor." The Director determined that the expert opinion letter did not establish that the Petitioner's proposed endeavor stands to impact the broader field or otherwise has implications rising to the level of national importance. We acknowledge that the opinion letter includes an analysis of the national importance of the Petitioner's proposed endeavor. While the Petitioner states that her proposed endeavor will involve the opening of her dental clinic, Dr. [redacted] refers to the Petitioner's "innovative research" contributing "to studies related to the nature and basis of implant failure." Additionally, Dr. [redacted] notes that the Petitioner is "well-qualified to provide educational lectures on oral hygiene and train professionals in the field." While both research and lecturing are commendable, the Petitioner has not articulated those activities as being part of her endeavor.[6]

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here, Dr. [redacted] advisory opinion is of little probative value as it does not meaningfully address the Petitioner's proposed endeavor in detail as it concerns national importance. Dr. [redacted] does not specify how the Petitioner's endeavor will have prospective impact on the United States, including national or global implications on dentistry, the potential to employ U.S. workers, or positive economic effects. His opinion letter is general in nature, concluding that the Petitioner's "expertise and skills" would "greatly benefit" the United States in a nationally important way. "In determining national importance, the officer's analysis should focus on what the

[5] According to the Small Business Administration's website, "[t]he HUBZone program fuels small business growth in historically underutilized business zones with a goal of awarding at least 3% of federal contract dollars to HUBZone-certified companies each year."

[6] The Petitioner must resolve inconsistencies 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).

beneficiary will be doing rather than the specific occupational classification." 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. Dr. [redacted] does not provide a substantive analysis of the Petitioner's proposed endeavor.

As the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the Dhanasar framework, she is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.