U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28999328

Date: DEC. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a registered nurse, 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 the record did not establish the Petitioner's eligibility for a national interest waiver under the *Dhanasar* analytical framework, as a matter of discretion. 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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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 qualifies for the EB-2 classification as a professional holding the foreign equivalent of an advanced degree. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

As a preliminary matter, the Petitioner asserts on appeal that in denying the petition, the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, she does not point to specific examples of this within the Director's request for evidence (RFE) and denial. Importantly, she also does not offer detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition, supported by pertinent law or regulation.

The Petitioner also alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [her] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While she asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

On appeal, the Petitioner relies upon the evidence and arguments previously offered and reaffirms her intention to continue her career as a registered nurse and acute care provider. She discusses her graduate level education in the field and claims to be "an exceptionally well-prepared healthcare manager." The Director determined in her denial that the Petitioner is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong, and we agree with her determination.

We also agree with the Director that the Petitioner has not established the national importance of her proposed endeavor. On appeal, the Petitioner continues to emphasize the importance of the health care industry generally, and the field of registered nursing specifically, to our nation. For instance, she discusses how nursing vacancies have negatively impacted patient outcomes and have "limited Americans' access to higher level healthcare to the detriment of communities, families, and individuals." But the record does not suggest that the Petitioner's patient care duties would meet the current demand for registered nurses, address the national registered nurse shortage, or otherwise operate on a scale rising to the level of national importance.

In addition, the Petitioner highlights the societal welfare and economic importance of health care professionals such as registered nurses by pointing to previously provided industry and governmental reports on this and other related topics. This material demonstrates the registered nursing occupation is important; however, this does not necessarily establish the national importance of the proposed

endeavor. 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 much of the Petitioner's evidence relates to the importance of the registered nurse profession or field, rather than the national importance of her specific proposed endeavor. While we agree that the registered nurse field is important, it is not apparent from the evidence or arguments provided that the Petitioner's specific proposed endeavor has national importance.

The Petitioner asserts on appeal that as a registered nurse "she will enhance the revenue of U.S. companies, thus elevating their productivity patterns and market growth, while simultaneously making significant impact on [the lives of] individuals and families by providing much needed healthcare services." She also contends that she will "provide significant service to her community by safeguarding the lives of the nation's citizens and providing high-level specialized services which will ultimately impact the productivity of the U.S. business ecosystem. . . ." Additionally, she discusses her plans to pursue a nursing instructor position in order to train "a new generation of nurses."

While we acknowledge her general assertions about how she will substantially benefit the nation through her proposed endeavor, the Petitioner has provided insufficient probative evidence or explanation to support them. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376. In *Dhanasar*, we determined 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. Even if the Petitioner had provided additional evidence of her capacity to deliver registered nursing services or to provide nursing instruction to others, we would likely conclude that such evidence is not sufficient to demonstrate the endeavor's broader impact. The Petitioner has not sufficiently demonstrated how her proposed endeavor would impact the registered nurse profession or the nation at a level commensurate with national importance. *Id.* Therefore, we agree with the Director that the Petitioner is ineligible for a national interest waiver as a matter of discretion.[2]

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the Director weighed the law and facts of this case appropriately, and the petition will remain denied.

ORDER: The appeal is dismissed.

[2] We also agree with the Director's conclusion that the Petitioner did not establish her eligibility under *Dhanasar's* third prong. But as she is otherwise ineligible for a national interest waiver further analysis of her eligibility under the third prong outlined in *Dhanasar* would serve no meaningful purpose.