U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26982472

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks second preference 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 EB-2 classification. 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 established she was an advanced degree professional, but had not demonstrated 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.

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 first demonstrates qualification for the underlying EB-2 visa classification, they must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- 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.

[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).

Upon review of the entire record, 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 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.").

The Director thoroughly reviewed, discussed, and analyzed the evidence on record, including the industry reports and articles, recommendation letters, documents regarding the Petitioner's education and experience, the Petitioner's statements, and a business plan. The Director considered the Petitioner's claims under the three prongs of *Dhanasar* and determined that although she established that she meets the second prong of *Dhanasar*, she did not show eligibility under the first and third prong of the *Dhanasar*.

On appeal, the Petitioner contends the Director applied a stricter and higher standard of proof and erroneously applied the law without properly reviewing the evidence.

With respect to the standard of proof in this matter, a petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed her evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

In discussing the first prong, the Director concluded that the Petitioner's endeavor, which is to work as a nurse "with a health care facility to provide expert nursing advice and treatment to patients," has substantial merit, but not national importance. The Director evaluated the recommendation and expert opinion letters but determined that they do not demonstrate how her proposed endeavor would impact the field of nursing more broadly. 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." *See Dhanasar*, 26 I&N Dec. at 889.

The Director also considered the Petitioner's industry reports on importance of the healthcare industry and shortage in the nursing profession but found that 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." *Id.*

The Director further reviewed the submission of the Petitioner's revised statement describing her plans to develop a home health service company, [redacted] in the state of Florida.[2] However, the Director found that the Petitioner did not substantiate the business plan's growth projections or future job creation to demonstrate that the benefits to the regional or national economy

[2] The Petitioner introduced this revised statement and a business plan after the issuance of the request for evidence (RFE).

resulting from her undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 889.

The Petitioner offers on appeal generalized claims about her endeavor's national importance. For instance, the Petitioner states that "her professional activities relate to a matter of national importance and impact, particularly they generate substantial ripple effects upon key health and business activities on behalf of the United States" and again claims that her endeavor "will have multiple positive effects on the U.S. marketplace, thus enhancing the business operations on behalf of the nation." However, the Petitioner does not meaningfully analyze how her specific endeavor meets the national importance as defined in *Dhanasar* or provide independent and objective evidence to substantiate her claims.

For reasons discussed above, the petition will remain denied as the record does not demonstrate that the Petitioner meets the first prong of *Dhanasar*. 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 *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.