U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28806718

Date: NOV. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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). 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. The Director concluded that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement 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 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[4]

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as matter of discretion[5], 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 Petitioner proposes to work in the United States as a nurse. The Director determined that the Petitioner established her eligibility for the underlying EB-2 classification as an individual of exceptional ability; however, she did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Individual of Exceptional Ability

The Director determined that the Petitioner established her eligibility for the underlying EB-2 classification as an individual of exceptional ability. However, the Director did not provide an explanation for the finding. Upon de novo review, the record does not establish the Petitioner is an individual of exceptional ability.

The Petitioner claimed that she meets four of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). For the reasons provided below, we conclude that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability.

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https: //www.uscis.gov/policy-manual.

[4] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, supra, at F.5(B)(2).

[5] See also Poursina v. USC1S, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

> An official academic record showing that the individual has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner submitted copies of two diplomas indicating she earned a bachelor's degree in nursing from Universidade [redacted] in Brazil in 2014 and a post-baccalaureate specialization degree in urgency and emergency from [redacted] in Brazil in 2016; the respective academic transcripts; and an academic evaluation. Based on these documents, the Petitioner has established that she meets the criterion.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner submitted documents indicating she is licensed as a registered nurse for Florida and New York. Based on this evidence, the Petitioner has demonstrated she meets the requirements for the criterion.

> Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

To meet this criterion, the Petitioner submitted a certificate of good standing from the National Board of Nursing [redacted] in Brazil stating that the Petitioner is registered with the agency and is "suitable for professional practice as a nurse," has paid her fees, and has no ethical or behavioral proceeding decisions. The Petitioner also provided a website printout indicating that the Federal Nursing Council and its regional councils regulate nurses, nursing technicians, and assistants.

However, the Petitioner has not explained how the Petitioner's certificate of good standing as a registered nurse with the National Board of Nursing evidences her membership in a professional association pursuant to the regulations for this criterion. The record does not demonstrate what professional qualifications, if any, the council considered for issuance of the document to the Petitioner. The record does not include evidence demonstrating the National Board of Nursing is a professional association, as required under the criterion.

The Petitioner has not demonstrated her membership in a professional association under the criterion.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner submitted letters of support from her physician colleagues and professors. The letters attest to the Petitioner being a committed and knowledgeable student who did well in her coursework, as well as being a competent, reliable, and skilled nurse who is attentive to her patients. While the record shows the Petitioner is educated and trained as a nurse, and her colleagues value the care she provides to her patients, it does not demonstrate that the Petitioner has been recognized for achievements and significant contributions to the industry or field, as required under the criterion.

Therefore, the Petitioner has not demonstrated she meets this criterion.

The Petitioner also submitted an opinion as comparable evidence under 8 C.F.R. § 204.5(k)(3)(iii). According to 8 C.F.R. § 204.5(k)(3)(iii), if the regulatory criteria standards under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) do not readily apply to a petitioner's occupation, comparable evidence may be submitted to establish the eligibility for exceptional ability. When evaluating such comparable evidence, USCIS considers whether the criteria are readily applicable to a petitioner's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in the regulation.[6] The Petitioner should explain why the evidence it has submitted is comparable. General assertions that any of the six objective criteria do not readily apply to the Petitioner's occupation are not acceptable.[7]

Here, the Petitioner submitted an opinion from [redacted] professor at [redacted] in New York, and described it as "other comparable evidence of eligibility." However, she does not explain why the evidence is comparable or why any of the regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) do not apply to her occupation. [redacted] opinion focuses on the Petitioner's eligibility under the regulations for a discretionary waiver of the job offer requirement in the national interest. See Section 203(b)(2)(B)(i) of the Act. The opinion does not mention the underlying EB-2 classification or the Petitioner's eligibility as an individual of exceptional ability.

Without further information how the opinion is comparable to the regulatory criteria, we are unable to determine that it is comparable evidence pursuant to 8 C.F.R. § 204.5(k)(3)(iii). Instead, the evidence appears to be general additional evidence to be considered in assessment of exceptional ability. If the Petitioner had met three of the regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), this evidence would be considered in the final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[8]

The Petitioner has not established that she meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F). Since the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

B. National Interest Waiver

The Director determined that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that it is of national importance, as required by the first prong of the Dhanasar framework. The Director further found that while the Petitioner established she is well positioned to advance the proposed endeavor under the second prong of Dhanasar, she did not show that on balance, waiving the job offer requirement would benefit the United States under the third

[6] See generally 6 USCIS Policy Manual, supra, at F.5(B)(2).
[7] See generally 6 USCIS Policy Manual, supra, at F.5(B)(2).
[8] See Kazarian v. USCIS, 596 F.3d at 1119-20; see generally 6 USCIS Policy Manual, supra, at F.5(B)(2).

prong of Dhanasar. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.[9]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, 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." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to work in the United States as a nurse with a healthcare facility. The Petitioner states, "She will provide and coordinate high-quality care to patients with wide-ranging injuries and illnesses, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members." She also indicates she will promote "proper treatment techniques by training other nurses." The Petitioner indicates that her work will contribute to overcoming the shortage of knowledgeable and qualified nurses in the healthcare industry. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the record did not "establish that her nursing work would impact the nursing field and healthcare industry more broadly, as opposed to being limited to the patients she serves and her colleagues she will mentor." Accordingly, the Director found that the Petitioner's "work as a Nurse does not meet the 'national importance' element of the first prong of the Dhanasar framework."

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; her professional plan and statement describing her professional accomplishments and her proposed endeavor's benefits; evidence of her contributions to the field; letters of recommendation from her professors and colleagues; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we find the record does not demonstrate that the Petitioner's proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the 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 the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

[9] While we may not discuss every document submitted, we have reviewed and considered each one.

On appeal, the Petitioner argues that her proposed endeavor has national importance, particularly because it will "generate substantial ripple effects on behalf of the United States." The Petitioner stresses her education and her more than nine years of experience in the health field to show "her proposed work offers innovations and improvements of broad implications to the United States." She argues that her resume and professional statement show her qualifications and knowledge make her "uniquely qualified to advance her proposed endeavor to enhance U.S. competitiveness in the sector" and will "help the [United States] stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy."

However, the Petitioner's reliance on her academic credentials and professional experience to establish the national importance of her proposed endeavor is misplaced. Her academic credentials and professional experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. See id. at 889.

In Dhanasar, we determined that 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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the fields of nursing and healthcare, as contemplated by Dhanasar: "[a]n 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. The evidence does not suggest that the Petitioner's work as a nurse for a healthcare facility would impact the nursing and healthcare fields more broadly.

With the petition, the Petitioner submitted her professional statements contending her proposed endeavor has national importance based on her work as a nurse mitigating the shortage of qualified healthcare professionals in the United States. The Petitioner states, "The [United States] is in desperate need of professional Nurses of my caliber and, as a Nurse, I care for my patients and willingly place myself in dire situations in order to care for the sick." Her statement explains the growing need for qualified nurses, the U.S. shortage of nurses and healthcare professionals, and her willingness to help meet the need for nurses. She argues on appeal that the record includes reports and articles showing the "important role that Nurse professionals play in the health field" and "due to its economic implications – which very much affect nationwide preparedness." The Petitioner further explains the importance of nurses during a public health crisis, such as during the recent COVID-19 pandemic. The reports and articles relate to: nursing careers; importance of nurses; healthcare worker shortage; expected job growth of nurses; issues with job retention of nurses; increased demand for healthcare workers under the Affordable Care Act; differences between registered nurses and bachelor of science nursing; nurse practitioners in the United States; mobile technology benefiting healthcare; monkeypox straining public health system; a report on education and the workforce for science, math, engineering, and mathematics; and U.S. hospitals hiring foreign nurses.

We recognize the importance of the healthcare industry, the nursing field, and related careers, and the significant contributions from immigrants who are nurses in the United States; however, merely

working in the healthcare field as a nurse is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See id. We acknowledge that a shortage of nurses and healthcare professionals demonstrates substantial merit of a proposed endeavor; however, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the field. As pointed out by the Director, the U.S. Department of Labor through the labor certification process directly addresses such shortages of qualified workers. The issue here is whether the Petitioner has established how her proposed endeavor would affect national nursing and healthcare employment levels or the U.S. economy more broadly consistent with national importance. However, the record does not demonstrate how the Petitioner's proposed endeavor will address a shortage of qualified nurses or healthcare professionals.

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." 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 industry reports and articles submitted do not discuss how the Petitioner working as a nurse will overcome the shortage of nurses and healthcare workers in the United States.

To further support the national importance of her endeavor, the Petitioner submitted an opinion from [redacted] professor for the nursing department at [redacted] in New York. The opinion, however, focuses on the Petitioner's work being "in an area of substantial merit and national importance." It describes how the United States will continue to a have a major shortage of nurses to the year 2028. The opinion mainly focuses on the Petitioner's work as a nurse having "national importance for U.S. healthcare institutions operating [sic] or planning to operate in Brazil, wishing to have the expert guidance and advice of such a healthcare professional as [the Petitioner]." The opinion describes the Brazil healthcare system and a U.S. healthcare company providing services in Brazil benefiting from the Petitioner's services. The opinion focuses on the need for qualified nurses and how the Petitioner's experience as a nurse in Brazil makes her well positioned to provide guidance and advice to U.S. healthcare companies operating or planning to operate in Brazil, instead of focusing on the Petitioner's specific endeavor having a prospective impact in the field of nursing.

However, the record does not indicate that the Petitioner's proposed endeavor includes actively targeting U.S. healthcare companies that do business, or plan to do business in Latin America or Brazil. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm'r 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Also, as previously discussed, stating that the Petitioner's work would support an important industry with a shortage of qualified professionals is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her future patients or employers to impact the field or any other industries more broadly at a level commensurate with national importance. She has not demonstrated that the work she proposes to undertake as a nurse offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under the second and third prongs. 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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.