U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28949083

Date: NOV. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse auditor, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 Petitioner did not establish eligibility for a national interest waiver under the framework outlined in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). 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.

On appeal, the Petitioner presents a brief but does not add new evidence or arguments to confront the reasoning the Director already provided. In the request for evidence (RFE) and the decision, the Director addressed many of the Petitioner's assertions regarding the national importance of the proposed endeavor. The Director discussed multiple pieces of evidence individually and quoted material in the record in several instances. The Director further identified numerous deficiencies in the evidence and explained specifically why the evidence did not establish the Petitioner's eligibility under the Dhanasar framework.

We adopt and affirm the Director's analysis and decision regarding the first Dhanasar prong. 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). Below we provide individualized consideration to the petition and to many of the Petitioner's appellate claims. Although the Director already addressed some of these issues, we provide additional context for them.

However, before discussing the Petitioner's appellate claims, we must first discuss the Petitioner's eligibility for the EB-2 classification. Although the Director determined she established eligibility as an advanced degree professional, neither the RFE nor the decision contained any analysis of the issue. The evidence establishes that she earned the foreign equivalent of a U.S. bachelor's degree; however, we question the accuracy and credibility of the evidence demonstrating her experience. According to the documents provided in the initial filing and in the RFE response, the Petitioner appears to have simultaneously worked as a nurse at [redacted] as a junior nurse auditor for [redacted] and running her own business, [redacted]. Further, during the time in which she claims to have audited other companies, such as [redacted] and [redacted] the record is unclear as to whether the Petitioner worked for [redacted] as their employee or for her own business with [redacted] as the client. For instance, a colleague wrote in a recommendation letter that the Petitioner's business contracted with [redacted] while Counsel's statements and her government employment record suggest the Petitioner worked for [redacted] as an employee. The dates of her work with [redacted] also appear to be inconsistent. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id. As various work history documents, recommendation letters, as well as the Petitioner's and Counsel's statements appear to conflict with each other, we question the accuracy of the Petitioner's claimed work history overall. Accordingly, we conclude the record is insufficient to establish the Petitioner has at least five years of progressive post-baccalaureate experience.

On appeal, the Petitioner asserts the Director conflated the Petitioner's employment with her proposed endeavor and that the "endeavor is plainly different from the proposed employment the petitioner seeks to hold in furtherance of the endeavor." The Petitioner reiterates on appeal that her employment is the vehicle to achieve the proposed endeavor. While we recognize the distinction, we conclude that employment held in furtherance of the proposed endeavor, while not required for national interest waiver eligibility, necessarily informs the level of impact the proposed endeavor may have and therefore the broader implications of the endeavor. For instance, the extent to which the Petitioner can carry out her proposed endeavor may differ depending on whether the Petitioner provides home health services as an independent contractor, runs her own healthcare auditing business, or works as an auditor within an established hospital system. Even if we agree that the Director improperly conflated the Petitioner's employment with her endeavor, this does not establish how doing so would "go beyond harmless error." In other words, the Petitioner has not explained how an "inappropriate conflation" diminishes the Director's analysis of the endeavor's national importance.

The Petitioner emphasizes her past achievements as evidence to suggest that she will create a similar impact in carrying out the proposed endeavor. However, the record does not reflect that the Petitioner has contributed to her field in a manner commensurate with national importance. As the Director noted, the Petitioner's accomplishments relate to the results she achieved on specific projects or for specific employers/clients but are not indicative of broader implications to the field. The few recommendation letters indicating the Petitioner's work extended beyond her individual employers do not discuss the Petitioner's impact in specific terms. For instance, the letters' authors do not provide specific names of other hospitals that adopted her methods or objective documentary evidence to corroborate the claimed cost savings and quality improvement percentages. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. See 1756, Inc.

v. U.S. Att'y Gen., 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The Petitioner asserts the Director abused their discretion in failing to address all evidence, citing Buletini v. INS, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in Buletini, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the Buletini decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

The Petitioner contends the Director ignored evidence, such as the JAMA report, evidence of a U.S. nursing shortage, and the Biden administration's National Health Service Corps funding. As the Director's decision references these exact pieces of evidence, we do not find support for the Petitioner's contention. Additionally, the Petitioner contends that her initial filing and RFE response contained ample "testimonial and objective documentary evidence to establish the national importance of the proposed endeavor from both an economic and social welfare standpoint." However, the Petitioner does not specifically identify any evidence the Director ignored regarding the economic and social welfare impact of the proposed endeavor. The objective evidence in the record, such as the industry articles and reports, does not reference the Petitioner's specific proposed endeavor. Here, the Petitioner improperly relies upon the importance of the industry and profession, which the articles and reports demonstrate, as sufficient to establish the national importance of her proposed endeavor.

As the Director fully explained, the Petitioner has not established eligibility under the Dhanasar analytical framework. We adopt and affirm the Director's analysis and decision regarding the first Dhanasar prong and conclude the Petitioner has not established she is eligible for or otherwise merits a national interest waiver.[1]

ORDER: The appeal is dismissed.

[1] 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).