U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28233196

Date: OCT. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks second preference immigrant classification as an advance degree professional, 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 Nebraska Service Center denied the petition, concluding that a waiver of the required job offer and thus of the labor certification, would not be in the national interest. Additionally, the Director determined that the petition could not be approved because of the "marriage-fraud bar." *See* section 204(c) of the Act, 8 U.S.C. § 1154(c). 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. Next, a petitioner 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 the 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).

II. ANALYSIS

A. National Interest Waiver

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

As a preliminary matter, on appeal the Petitioner contends it was an "abuse of discretion" for the Director to deny the petition determining that he was ineligible for a national interest waiver - without first issuing a notice of intent to deny (NOID) or a request for evidence (RFE) to address the dispositive factors in the record regarding this aspect of his immigration benefit request. He notes that while the Director issued a NOID discussing "sham marriage issues" involving his prior marriage, "the supposed deficiencies on the I-140 petition" were not addressed therein. The regulation at 8 C.F.R. § 103.2(b)(8), however, permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Further, even if the Director had erred as a procedural matter, which he did not, it is not clear what remedy would be appropriate beyond the appeal process itself, which provided the Petitioner an opportunity to supplement the record and establish that he merits a national interest waiver as a matter of discretion. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner another opportunity to supplement the record with new evidence.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicates he "hold[s] the position of Qualify Assurance Officer with the Federal Police Referral Hospital in [redacted] Ethiopia," and asserts that he "views the U.S. as the country where he can most effectively and productively employ his expertise in quality assurance and improvement in health systems and laboratory services. . . ." His endeavor appears to span multiple fields of interest, including the "management of laboratory information system; accreditation; data digitalization; laboratory science; establishment of early infant diagnosis and HIV load testing services; technical proficiency in molecular laboratory, hematology, clinical chemistry, blood bank, parasitology and, microbiology . . . ."

The Director concluded in the denial that the Beneficiary's prospective work within a wide variety of fields associated with healthcare industries has substantial merit and national importance. However, we withdraw the Director's determination that the Petitioner has established the substantial merit and national importance of his proposed endeavor. The first prong in *Dhanasar*, which requires a showing of both substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake. For the reasons discussed below, the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong and that he is well-positioned to advance it under the second prong of the *Dhanasar* analytical framework. While we may not discuss every document submitted, we have reviewed and considered each one.

The petitioner describes his specific prospective endeavor, as follows:

> I am eager to continue my work in the United States with a hospital, non-affiliated laboratory corporation or other organization that will allow me the opportunity to continue

> to grow my own personal ambitions while serving the U.S. population to a high degree. I believe that my expertise and experience would be valuable to the medical community and the populations it serves, particularly in expanding health care services to populations in need and ensuring the highest-quality laboratory services are available to all members of the United States of America.

The Petitioner emphasizes the socioeconomic importance of highly functioning healthcare networks in the United States, and cites to articles, such as an article entitled, *Health and the Economy: A Vital Relationship*, for the proposition "there is a direct connection between public health expenditures and the economic success of the U.S. workforce, as a healthy population is essential for participation in the [global market]." He asserts that "bringing in skilled professionals with extensive experience" such as himself, "would enhance any efforts to protect the domestic and international interests of the United States while encouraging its continued participation in critical health and human services programs."

Although the Petitioner's statements reflect his intention to continue working in the healthcare industries in the United States, he has not offered sufficient information and evidence to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance. 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. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the healthcare industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

For example, the Petitioner puts forth vague assertions that he has "the ability to positively impact the public health of U.S. [citizens] through the extension of healthcare services to vulnerable and underserved populations, and the execution of routine and emergency medical screenings to ensure the safety of the population during health care crises. . . ." But the Petitioner did not submit plans or offer explanations sufficient to address how he would provide healthcare services to persons residing in the United States in order to illustrate that the prospective impact of his healthcare-related activities would rise to the level of national importance.

On appeal, the Petitioner also points to his letters of support which discuss his knowledge, skills, and work experience, but these letters do not sufficiently explain the national importance of his specific endeavor under the *Dhanasar*'s first prong. For instance, the letter from A-D-, discusses aspects of the Petitioner's work abroad as a quality assurance professional, noting that he "led the implementation of the quality management system" for his current employer. A-D- asserts that the Petitioner "is an exceptional professional, possesses an abundance of critical skills necessary for success in the fields of laboratory, science and quality assurance, and is a dedicated, thoughtful, and wonderful person," and contends "the U.S. would greatly benefit from his talents and abilities." Likewise, S-K- favorably examines the Petitioner's healthcare career in his letter, and maintains that the Petitioner "is a bright, talented, and well-rounded laboratory scientist and I am sure he will continue to excel in this field wherever he goes."

While A-D-, S-K- and the authors of other letters in the record provide general narrative about the Petitioner's professional skills and abilities, they do not sufficiently identify, analyze, or discuss how the Petitioner's proposed work will broadly impact the United States. 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. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). We acknowledge that the letter writers hold the Petitioner in high regard but conclude the letters in the record do not provide sufficient information regarding the specific endeavor(s) that the Petitioner will engage in or adequately detail the national importance of his proposed work under *Dhanasar*'s first prong.

In summary, absent probative supporting evidence to establish how the Petitioner intends to pursue the healthcare-related activities in his proposed endeavor, he has not met his burden to establish what his *specific* proposed endeavor will actually entail. The record does not establish *how* he will positively impact the health of the U.S. population, or that through his work he will significantly impact his field(s) of interest, or the U.S. healthcare industries more broadly. Without more, the Petitioner has not established his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

In determining whether an individual qualifies for a national interest waiver, we must rely on the *specific* proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the *Dhanasar* analysis. Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong of the *Dhanasar* precedent. Accordingly, he has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. For the foregoing reasons, the petition may not be approved.

B. Marriage Fraud Finding

USCIS cannot approve a visa petition for a noncitizen who has attempted or conspired to enter into a marriage "for the purpose of evading the immigration laws." Section 204(c) of the Act. Even if legally valid where it occurred, a marriage "entered into for the primary purpose of circumventing the immigration laws" permanently bars approval of a visa petition. *Matter of P. Singh*, 27 I&N Dec. 598, 601 (BIA 2019) (citations omitted).

To determine the existence of a fraudulent or sham marriage, adjudicators must determine whether the parties "intended to establish a life together at the time they were married." *Id.* Officers must examine the parties' conduct before and after the marriage to ascertain their intent, but "only to the extent that it bears upon their subjective state of mind at the time they were married." *Id.* "Substantial and probative evidence" must support a marriage-fraud finding. 8 C.F.R. § 204.2(a)(1)(ii). Thus, to invoke the marriage-fraud bar, the record must establish that a marriage was "more than probably" fraudulent. *Matter of P. Singh*, 27 I&N Dec. at 607. This standard of proof is higher than a preponderance of the evidence but lower than clear and convincing evidence. *Id.* at 607 n.7.

The Director determined in denying the petition that the record contains substantial and probative evidence that the Petitioner's prior marriage was entered into for the purpose of evading immigration laws. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether section 204(c) of the Act is applicable here. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 and second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.