U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28539600

Date: OCT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, requests classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of its job-offer requirement. *See* Immigration and National Act (the Act) section 202(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and thus the related requirement for certification from the U.S. Department of Labor (DOL) - if she demonstrates that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate her qualifications for the EB-2 category as a member of the professions holding an "advanced degree" or that she warrants a national interest waiver.

On appeal, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has established her qualifications for the requested EB-2 category but not for a national interest waiver. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. This category usually requires prospective U.S. employers to offer noncitizens jobs and obtain DOL certifications to permanently employ the noncitizens in the country.[1] Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid these job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections are in the national interest. Section 203(b)(2)(B)(i) of the Act.

[1] Recognizing a nursing shortage in the United States, DOL has a shorter, less demanding labor certification process for nursing positions. *See* 20 C.F.R. § 656.5(a)(3)(ii) (listing the occupation of professional nurse on Schedule A). But Schedule A proceedings still require job offers. *See* 20 C.F.R. § 656.15(a).

Neither the Act nor regulations define the term "national interest." Thus, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The Petitioner, a Brazilian national and citizen, attended university in her home country, earning a *titulo de enfermeira* and two post-graduate certificates in family health and oncology. She claims that, before entering the United States in 2017, she gained more than eight years of nursing experience in Brazil.

In May 2020, the Petitioner and her spouse established a U.S. company for which she intends to work as a "nursing management specialist." She states that she would provide management and guidance to nursing departments at U.S. hospitals and other healthcare facilities.

B. Advanced Degree Professional

An advanced degree professional must have an "advanced degree." Section 203(b)(2)(A) of the Act. The term includes "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2). A petitioner must demonstrate their eligibility for a requested benefit at the time of the benefit's request. 8 C.F.R. § 103.2(b)(1).

As the Director found, the record demonstrates that the Petitioner's 2008 *titulo de enfermeira* equates to a U.S. bachelor's degree in nursing. The Director also determined that she established her possession of about two years and six months of progressive post-baccalaureate nursing experience, from July 2014 to January 2017. But the Director found that, contrary to the requirements for an advanced degree professional, she did not demonstrate that she gained at least five years of qualifying post-baccalaureate experience.

On appeal, the Petitioner contends that her work for a Brazilian hospital from February 2010 to May 2014 constitutes an additional four-plus years of qualifying experience, establishing her eligibility as an advanced degree professional. To demonstrate qualifying experience, a petitioner must submit letters from their former employers. 8 C.F.R. § 204.5(g)(1). The letters must contain the employers' names, titles, and addresses, and descriptions of the petitioner's experience. *Id.*

In response to the Director's request for additional evidence, the Petitioner submitted a 2022 letter from the Brazilian hospital's medical director. The letter states the Petitioner's employment as a nurse manager from February 2010 to May 2014 and describes her experience. The Director discounted the letter, finding that its description of the Petitioner's duties conflicts with one in a prior hospital letter that stated she was "working in rotating shifts." *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

Contrary to the Director's finding, however, the record does not establish that the hospital letters conflict. Both documents state that the Petitioner worked in the hospital's "Central Sterile Services Department," or "CSSD." Other letters and certificates of record also indicate her nursing work at that time in the hospital's CSSD. Thus, although the 2022 letter does not specify the rotating nature of the Petitioner's shifts, the document describes her experience consistent with the prior letter and other materials. Thus, a preponderance of the evidence demonstrates her possession of more than five years of progressive, post-baccalaureate experience in the nursing field.

The Petitioner has established her qualifications for the EB-2 immigrant visa category as an advanced degree professional. We will therefore withdraw the Director's contrary finding.

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's proposed undertaking could improve U.S. healthcare services and help alleviate the nation's nursing shortage. Thus, we agree with the Director that her venture has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's proposed work would rise to the level of national importance. The Director found that she did not establish that the benefits of her endeavor would reach beyond her company and its clients.

On appeal, the Petitioner contends that the Director overlooked evidence, including that:

- The Petitioner would help U.S. nursing teams "battle against COVID-19 so that lives can be saved and the [U.S.] economy can begin to heal."

- While her business would initially target clients in Miami, the enterprise would - within five years - also serve clients in [redacted]
- The Petitioner's business would help clients provide better care, improve their financial performances, increase patient satisfaction, enhance the work environments of medical professionals, disseminate skills and knowledge to U.S. workers, generate additional revenues, and create employment opportunities.
- Expert opinion letters state that her endeavor has the potential to employ U.S. workers, stimulate economic growth, and teach and train other medical professionals.

We agree that the activities and results listed above are all worthy. But, as previously indicated, USCIS must focus on the Petitioner's *particular* endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake.") The Petitioner has not sufficiently demonstrated that her specific endeavor would have national implications for the healthcare field or the economy.

For example, the Petitioner's business plan projects that, within five years, her business would generate sales of $1,113,416, directly employ eight people, and indirectly create about 20 jobs. Even if these projections are realistic, however, the record does not establish that they are nationally significant or that the business would benefit an economically depressed area. Similarly, the Petitioner has not demonstrated that her work would lead to national advances in the healthcare field.

The two expert opinion letters - from U.S. professors of biology and anatomy/physiology/microbiology - state that the Petitioner's business would help healthcare providers improve efficiency, better manage their caseloads, stimulate productivity, and attract professionals to the field. But the letters describe her endeavor as contributing to the improvement of U.S. healthcare. The expert opinion letters do not state that the Petitioner's specific venture - by itself - would significantly affect the U.S. healthcare field or economy.

For the foregoing reasons, the Petitioner has not demonstrated that her proposed endeavor has national importance. We will therefore affirm the petition's denial.

Our determination regarding the venture's national importance resolves this appeal. We therefore decline to reach and hereby reserve the Petitioner's appellate arguments regarding her positioning to advance her endeavor and the purported benefits to the country of waiving U.S.-worker protections. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner demonstrated her qualifications for EB-2 classification as an advanced degree professional. The record, however, does not establish that her proposed endeavor has national importance.

ORDER: The appeal is dismissed.