U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27490116

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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).

The Petition was initially denied by the Director of the Texas Service Center, who concluded that the Petitioner was not eligible for, and did not merit as a matter of discretion, a national interest waiver. The Petitioner appealed this decision, and we remanded the matter back to the Director with instructions to consider the Petitioner's eligibility for the EB-2 classification as well as whether the Petitioner had made an impermissible material change to the petition when responding to the Director's request for evidence (RFE). After issuing a notice of intent to deny (NOID) and considering the Petitioner's response, the Director again denied the petition, concluding that the record did not establish that the Petitioner is eligible for the EB-2 immigrant classification as either an advanced degree professional or an individual of exceptional ability. In addition, they determined that the Petitioner is not eligible for, and does not merit as a matter of discretion, a national interest waiver. 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 United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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 that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], 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. EB-2 CLASSIFICATION

The Petitioner submitted translated copies of her diplomas, certificates, and transcripts, as well as an educational evaluation. In their decision, the Director determined that the record supported the evaluation's conclusion that the Petitioner's Title of Physician degree is equivalent to a bachelor's degree in medicine from an accredited university in the United States. However, they also concluded that the certificates that the evaluation found to be equivalent to master's degree in obstetrics, gynecology, and basic family health care appeared to be training classes, and that none of them were equivalent to an advanced degree above that of baccalaureate from an accredited institution in the United States.

As noted above, the regulation states that eligibility as an advanced degree professional may be shown if a petitioner is a member of the professions with a bachelor's degree and five years of post-degree experience in their specialty. Although the Director did not consider this evidence in their evaluation of the Petitioner's eligibility as a member of the professions holding an advanced degree, the record includes two statements from the Petitioner's former employers in the municipality of [redacted] in Brazil that she was employed as a physician for more than five years after completing her degree. We

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

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

[3] *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).

conclude that she has established her eligibility as a member of the professions holding an advanced degree, and thus for the EB-2 classification, and vacate the Director's decision in that regard.

III. NATIONAL INTEREST WAIVER

As stated above, *Dhanasar* sets forth a framework for analyzing eligibility for a national interest waiver, and a key part of that analysis is the identification of the specific endeavor that a petitioner proposes to undertake. In our earlier decision in which we remanded this matter to the Director following the Petitioner's first appeal, we pointed out that the Petitioner initially described her proposed endeavor as "Physician Researcher," which would include such duties as "developing and conducting relevant medical research" and "engaging in clinical investigations." However, in response to the Director's RFE, she had submitted a new statement in which she stated that she would work as a nurse practitioner and nurse midwife, providing medical care to patients at doctor's offices or hospitals. While the Petitioner mentioned research in this new statement, she was referring to her own review of the latest medical practices to prepare her to best provide medical care, not the sort of studies and laboratory work she had previously referenced. We noted that the Petitioner had not clarified her proposed endeavor, but had instead attempted to make changes to a key part of her petition that are not permissible. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998)(finding that a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements).

Per our remand, the Director issued a NOID in which they noted that the conflicting descriptions of the Petitioner's proposed endeavor left her intentions unclear. The Petitioner responded by introducing yet another proposed endeavor which involves her both providing medical care as a gynecologist and managing and developing her own business, [redacted] While this new evidence included a business plan for the proposed "primary care clinic and research center," it does not specify how the Petitioner intends to divide her time between providing general and gynecological care and managing and developing her business. In addition, although the evidence briefly mentions research and clinical trials, it does not include details regarding any research activities in which the Petitioner would potentially be engaged.

The purpose of a NOID is to notify a petitioner of USCIS' intent to deny a benefit request and explain the reasons for that, and to allow for a limited period for response, which may include additional evidence. 8 C.F.R. §§ 103.2(b)(8) and (11). Here, the Petitioner's initial description of her proposed endeavor did not include plans to form her own company as an entrepreneur or managing that company. The Petitioner has not shown that conducting medical research and forming and managing her own company are the same endeavor. Again, a petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *Izummi*, 22 I&N Dec. at 175.

It appears the Petitioner sought to address ours and the Director's concerns regarding her lack of specificity in her original proposed endeavor, but in so doing, she has significantly changed that proposed endeavor, now offering a third iteration that significantly departs from the original. Accordingly, we conclude that the focus of her endeavor, which appeared to largely involve medical

research, has now significantly changed to include entrepreneurialism and management.[4] If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1). For these reasons, the petition may not be approved.

In addition, even if the Petitioner had submitted her business plan and proposed endeavor to operate and manage a clinic while also providing medical care at the time of filing, we agree with the Director's conclusion that she has not sufficiently demonstrated the national importance of this endeavor. Much like the petitioner's proposed teaching activities in *Dhanasar*, the Petitioner has not shown that her provision of medical services to patients, or even management of a small clinic doing so, would more broadly impact the medical field or access to healthcare in the United States. *Dhanasar* at 893. Further, the Petitioner points to the business plan's forecasts regarding job creation, wages, and revenue, but we note that these projections are not supported by specific, relevant data and analysis concerning the business' potential growth.

In her appeal brief, the Petitioner repeats many of the same assertions regarding the overall importance of the healthcare industry in the United States that she made in responding to the NOID. These include general assertions about the need for skilled healthcare professionals, the need for healthcare business leaders to consider international expansion and strategic partnerships, the contributions of the life sciences community to quality of life, the benefits of medical innovations, and opportunities for investment in the Brazilian healthcare market. But it is not the overall importance of a particular field or industry that we consider when determining national importance, but the impact of the specific endeavor proposed by a petitioner. *Dhanasar* at 889. Not only is the nature of the Petitioner's proposed endeavor unclear, but it is also not apparent how these assertions, and the various media articles in the record covering the same or similar topics, relate to the Petitioner's intentions to work as a researcher, gynecologist, nurse, midwife, entrepreneur, or manager.

For the above reasons, the Petitioner has not proposed a specific endeavor that has been shown to be of substantial merit and national importance, and she has therefore not met the first prong of the *Dhanasar* analysis and shown that she merits 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 appellate arguments regarding the remaining two prongs. *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).

ORDER: The appeal is dismissed.

[4] We note that on appeal, the Petitioner also mentions that her proposed endeavor would be of national importance because it would create "new international partnerships," "establish the necessary structures to reach foreign markets," and "support the increased import and export of medical supplies." None of these activities were mentioned in her business plan.