U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28564497

Date: OCT. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial

merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan to:

> continue to use my abilities as a [p]hysical [t]herapist to help meet the demand and ameliorate the shortage of healthcare professionals in the country, provide highly skilled services to esteemed physical therapy practices, provide educational lectures to empower other professionals in the field, participate and lead innovative projects, and improve the overall health of U.S. citizens.

The Petitioner further asserted that her endeavor "will not only serve to improve the country's supply of skilled healthcare professionals, but also boost the U.S. economy and generate American jobs." We note that the Petitioner specifically stated at the time of filing that she "plan[s] on contributing to meet the growing demand for professionals in the field by seeking employment opportunities with companies and practices that need to fill openings," not that she would found a physical therapy consulting company.

In response to the Director's request for evidence (RFE), the Petitioner provided inconsistent information regarding what her proposed endeavor would entail. She reasserted that she "will treat and help patients improve posture, preventing back pain and often injuries caused by limbs in body asymmetry," and she further stated that she "will work in post-operative hospital ICU, working on the patient's recovery, promoting early discharge, caring for and guiding post-discharge care, and tracing a personalized protocol to achieve the patient's full recovery." The Petitioner also reasserted that she "will disseminate my knowledge to other professionals in the field." In contrast, though, the Petitioner stated that "[t]hrough her consulting services, [she] will help physical therapy clinics and practices improve their operations, streamline their workflows, and develop more effective treatment plans."

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N

Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Moreover, doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Because the Petitioner did not assert at the time of filing that her proposed endeavor would entail founding "consulting services," her statement in response to the Director's RFE that her endeavor would involve "her consulting services" presents a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Moreover, because the Petitioner stated in response to the Director's RFE that she would "work in post-operative hospital ICU" and that "her consulting services . . . will help physical therapy clinics and practices improve their operations, streamline their workflows, and develop more effective treatment plans," the RFE response casts doubt regarding what the Petitioner's proposed endeavor would specifically entail—working in a hospital or operating a physical therapy consulting company. The doubt cast on what the Petitioner proposes her particular endeavor would entail undermines the reliability and sufficiency of the evidence submitted. *See Matter of Ho*, 19 I&N Dec. at 591.

The Director acknowledged information in the record and concluded that "the [P]etitioner established that the proposed endeavor has substantial merit." However, the Director observed that "the [P]etitioner has not established that the proposed work has implications beyond a company (or any prospective employers), business partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of the endeavor." Consequently, the Director concluded that the record did not satisfy the first *Dhanasar* prong, without addressing the remainder of the *Dhanasar* prongs.

On appeal, the Petitioner summarizes her prior academic and work experience. She also summarizes the duties of a physical therapist and the benefits of physical therapy for patients who require it. The Petitioner references publications in the record containing generalized information regarding the physical therapy industry. She also states that the proposed endeavor "[i]mpacts a matter that a government entity has described as having national importance or is subject [sic] of national initiatives."

Also on appeal, the Petitioner again provides inconsistent information regarding what her proposed endeavor will entail. She reiterates that she "will work in post-operative hospital ICU, working on patient's [sic] recovery, promoting early discharge, caring for and guiding post-discharge care, and tracing a personalized protocol to achieve the patient's full recovery." However, she also reasserts that "[t]hrough her consulting services, [she] will help physical therapy clinics and practices improve their operations, streamline their workflows, and develop more effective treatment plans." She also states that, "[b]y offering her expertise and guidance to other physical therapy professionals, [the Petitioner] will help improve the quality of care provided to patients across the country." The Petitioner further reasserts, as she stated in response to the Director's RFE, that she will "help bring . . . the respirator invented in Brazil by [redacted] technical lead [redacted] . . to the U.S."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the

"specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's discussion of her prior academic and work experience is immaterial to whether the proposed endeavor has national importance. As noted, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *Id.* at 889. Although an individual's prior academic and work experience is material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—it does not relate to the first *Dhanasar* prong—whether the "specific endeavor that the [noncitizen] proposes to undertake [has] national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or other broad implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area. *Id.* at 888-91. Similarly, the Petitioner's discussion of the general duties of a physical therapist, the benefits of physical therapy for patients who require it, and publications in the record containing generalized information regarding the physical therapy industry do not address how the Petitioner's specific endeavor may have the type of broader implications contemplated by *Dhanasar*. *See id.* Relatedly, regardless of whether physical therapy "[i]mpacts a matter that a government entity has described as having national importance or is subject [sic] of national initiatives" a petitioner must still establish how "the specific endeavor that the [noncitizen] proposes to undertake [has] national or even global implications *within a particular field*," "substantial positive economic effects, particularly in an economically depressed area," or other indicia of broader implications. *Id.* (emphasis added). Again, the importance of an industry, field, or profession in which an individual will work is not the relevant issue. *Id.*

Next, we note again that the Petitioner's assertions both in response to the Director's RFE and on appeal present a new set of facts that cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the new set of facts regarding physical therapy consulting services cannot establish eligibility, we need not address them further. *See id.* Moreover, the Petitioner's inconsistent statements that she would "work in post-operative hospital ICU" and that "her consulting services . . . will help physical therapy clinics and practices improve their operations, streamline their workflows, and develop more effective treatment plans," cast doubt regarding what the Petitioner's proposed endeavor would specifically entail—working in a hospital or operating a physical therapy consulting company. That doubt undermines the reliability and sufficiency of the evidence submitted. *See Matter of Ho*, 19 I&N Dec. at 591.

Even to the extent that the record contains reliable, sufficient descriptions of what the proposed endeavor would entail that may establish eligibility, the record does not establish how the endeavor may have the type of broader implications contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner's plan to "seek[] employment opportunities with companies and practices that need to fill openings" and provide physical therapy to patients of the healthcare facilit(ies) that employ her appears to benefit the Petitioner's potential employer(s) and patients. However, the record

does not establish how providing physical therapy to patients on an individual basis, according to a "personalized protocol to achieve the patient's full recovery," will have the type of broader implications contemplated by *Dhanasar*. *See id.* We acknowledge that the Petitioner asserted she would "provide educational lectures to empower other professionals in the field." However, the record does not establish how the Petitioner's educational lectures would have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889-90. Although the Petitioner asserted that her endeavor of working as a physical therapist would "boost the U.S. economy and generate American jobs," the record does not establish how her individual contribution to the healthcare industry would have an appreciable effect on the economy or workforce of any particular location to amount to the type of substantial positive economic effects contemplated by *Dhanasar*. *See id.* We also acknowledge that the Petitioner stated multiple times in the record that she will "help bring . . . the respirator invented in Brazil by [redacted] technical lead [redacted] . . . to the U.S." However, the Petitioner's own description of her involvement concedes that she did not invent the respirator in question and, thus, is not responsible for "certain improved manufacturing processes or medical advances" that the respirator may constitute, as addressed in *Dhanasar*. Therefore, she would not be responsible for whatever implications the respirator may have within the particular field of healthcare in general or physical therapy more specifically, nationally or even globally. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.