U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28435431

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

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

While neither 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 and states that USCIS may, as a matter of discretion, grant a petition if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, (3) on balance, waiving the job offer requirement would benefit the United States.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies as an advanced degree professional, but did not meet two of the three required prongs of the *Dhanasar* framework and therefore was ineligible for a national interest waiver as a matter of discretion. 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 because the Petitioner has not established that his proposed endeavor has national importance and thus, does not meet the first prong of the *Dhanasar* framework.

The Director considered the Petitioner's claims under the three prongs of *Dhanasar* and determined that he established the substantial merit of his proposed endeavor under the first prong, and he is well-positioned to advance his proposed endeavor under the second prong. Regarding national importance, the Director reviewed and analyzed the Petitioner's evidence including his professional statements, documentation presenting generalized employment creation assertions about his previous work abroad, his letters of support, and government and private industry reports and articles, and discussed their deficiencies. For instance, the Director quoted from the Petitioner's February 2023 professional plan in which the Petitioner described the plans for his proposed endeavor as follows:

> I plan to continue my career as an Ergonomist and Occupational Physiotherapy by conducting safe and practical assessments, examinations, and treatments in clinics and companies, long-term care facilities, learning centers, government-funded healthcare facilities, and other environments that demand these services for the improvement of physical health, including a better development of the workplace.

The Director took note of other initiatives that the Petitioner suggests he might focus on, such as developing informative materials for company employees about ergonomics and related issues and providing training on these topics. The Director denied the petition, in part, concluding that while it is likely that the Petitioner's work will enhance the welfare of his clients, he has not demonstrated that his work will broadly enhance societal welfare in the U.S. The Director noted the societal benefits from his work would likely be limited to the employees in companies that employed him, or to the clients that he would otherwise provide services to. He observed that benefits that are isolated to a single institution or locality in the U.S. might be so attenuated at the national level as to preclude a determination that the proposed endeavor is of national importance. Additionally, the Director concluded that the record was not supported by sufficient independent and objective evidence demonstrating that the Petitioner's work has potential implications of national importance.

Notably, the Director issued a request for evidence (RFE) asking for a detailed description of the Petitioner's proposed endeavor, supported with documentary evidence. However, the Petitioner did not sufficiently address this aspect. In the RFE response, he identfied various physiotherapy-related activities that he *might* pursue and the categories of businesses and institutions that *might* benefit from his services (e.g., clinics and companies, long-term care facilities, learning centers, and government-funded healthcare facilities). But he did not provide a detailed description explaining the manner through which he will prospectively deliver physiotherapy services, supported by documentary. Without more, the record does not offer evidence sufficient to translate *how* his specific work in the field stands to sufficiently impact U.S. interests or the physiology industry more broadly at a level commensurate with national importance.

In his appeal brief, the Petitioner incorporates the essentially the same narrative explanations that he submitted in response to the Director's RFE regarding his contention that his proposed endeavor is of national importance, which were considered by the Director in denying the petition. He does not, however, provide any new evidence or arguments which overcome the Director's determinations.

For instance, on appeal the Petitioner generally references the recommendation letters in the record noting they "describe his performance, projects, methods and improvements he developed and launched, goals achieved, and how he influenced the physiotherapy industry in Brazil." The Director discussed these letters in the denial and concluded that the authors focus primarily on their previous experiences with the Petitioner and his work ethic, but they do not address the national importance of his proposed endeavor. We agree.

The Petitioner also discusses his knowledge, skills, and work experience on appeal, but the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner reiterates on appeal that the evidence in the record about U.S. government initiatives and the information about the occupation presented in private industry reports "demonstrate the recognition of U.S. authorities of the broader implications of his work." The Director concluded in this denial that this material did not focus on the national importance of the Petitioner's specific endeavor, but instead focused on the industry as a whole. The Director primarily considered this evidence in determining that the Petitioner's proposed endeavor met the substantial merit aspect of the proposed endeavor rather than the national importance part.

On appeal, the Petitioner contends that he submitted evidence sufficient to demonstrate the national importance of his proposed endeavor and asserts the Director's determination to the contrary makes "clear that the [D]irector did not analyze all of the evidence submitted by the [P]etitioner." Based on our de novo review, the Director's denial encompassed well-founded explanations about the deficiencies in the Petitioner's evidence and we note that he provided similar discussion about the evidence initially submitted in the RFE notice. We conclude the record does not reflect that the Director ignored evidence in analyzing the eligibility factors in this case, either in the RFE or denial.

Therefore, we adopt and affirm the Director's decision as it relates to this 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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion. *See 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). 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 *Dhanasar's* third 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).

ORDER: The appeal is dismissed.