U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27419713

Date: AUG. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a nurse who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability and 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of exceptional ability. The Director further concluded 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.

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 did not establish that he is eligible for a waiver of the job offer and labor certification requirement.

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. 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.

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]

(A) An official academic record showing the noncitizen's possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
(B) Letters from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the proposed occupation;
(C) A license to practice the profession or certification for the profession or occupation;
(D) Evidence of the noncitizen's receipt of a salary or other remuneration demonstrating exceptional ability;
(E) Proof of membership in professional associations; or
(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, a final merits determination is conducted 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. ELIGIBILITY FOR EB-2 CLASSIFICATION

As a preliminary matter, we will discuss the issue of the Petitioner's EB-2 qualifications. At the time of filing the Petitioner stated that he met the requirements of the EB-2 visa classification because he is an individual of exceptional ability and has also attained the foreign equivalent to an advanced degree thus qualifying him as an advanced degree professional. Although this appeal will be dismissed

[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).

on grounds pertaining to the Petitioner's request for a national interest waiver, we will nevertheless address the Petitioner's claims regarding the EB-2 classification.

A. Exceptional Ability

In the denial, the Director only addressed the Petitioner's exceptional ability claim, finding that although the Petitioner demonstrated that he satisfied at least three of the six criteria listed in the regulations at 8 C.F.R. § 204.5(k)(3)(ii), he did not establish that he possesses exceptional ability. This conclusion was based on a final merits determination in which the Director explained that despite showing his academic credentials, meeting the licensing requirements of his profession, and holding a professional membership in the nursing field, the Petitioner did not demonstrate that he possesses a degree of expertise that surpasses what is ordinarily encountered in that field.

On appeal, the Petitioner disputes the Director's conclusion, arguing that it was made "without further analysis" of the evidence. As indicated above, however, the Director conducted a final merits determination where due consideration was given to relevant factors that were properly weighed in reasonably concluding that while the Petitioner met basic academic and licensing requirements of the nursing profession, he did not establish that his level of expertise was above the norm for the nursing field. Further, although the Petitioner argues that the Director failed to address certain evidence "with any specificity," he does not point to the specific evidence that he claims was not adequately considered, nor does he explain how such evidence supports his exceptional ability claim. As such, the Petitioner has not overcome the Director's conclusion on the issue of exceptional ability.

B. Advanced Degree Professional

Notwithstanding the Director's analysis regarding the above claim, by not addressing the Petitioner's alternate claim that he is an advanced degree professional, the Director did not fully consider whether the Petitioner qualifies for the EB-2 visa classification.

The record includes the Petitioner's diploma showing that in 2008 he attained a bachelor's degree in nursing from Universidade [redacted] In addition to the degree certificate, the Petitioner provided his college transcript reflecting a four-year full-time course load in the span of eight semesters as well as credential evaluations from three sources – United States Credential Evaluations, [redacted] – all stating that the Petitioner's completion of the four-year undergraduate nursing program is the foreign equivalent of a U.S. bachelor's degree. The record also includes a certificate showing that from April 2011 until February 2012 the Petitioner attended Universidade [redacted] where he completed a course of specialization in nursing in intensive and emergency care for children and adolescents. Although the Petitioner points out that the United States Credential Evaluations deemed the Petitioner to have attained the U.S. equivalent of a Master of Science in Nursing, that determination was made on the basis of the Petitioner's education and "10 years of experience," and not on the basis of his education credentials alone. Furthermore, according to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), the Escpecializacãol Título de Especialista, which the Petitioner earned after attaining his bachelor's degree, "represents attainment of up to 1 year of graduate study in the United States" and is therefore not the foreign equivalent of a U.S. master's degree. Accordingly, to establish that he is an advanced degree professional the Petitioner must

provide evidence showing that he has at least five years of progressive post-graduate work experience in his occupation. 8 C.F.R. § 204.5(k)(2). We find that the Petitioner has not provided sufficient evidence to meet this requirement.

First, we point to information provided by the Petitioner under penalty of perjury on his Application for Alien Employment Certification, ETA 750 Part B,[4] regarding his prior work experience. Specifically, at No. 15 of the application the Petitioner stated that he held two part-time positions during an overlapping timeframe; he stated that from April 2013 to January 2015 he was employed as a "senior nurse" at [redacted] Hospital and that from April 2013 to February 2015 he was employed as a "nurse" at Hospital [redacted]. However, the record contains an employment verification letter authored by [redacted] a senior nurse at the [redacted] Hospital, who stated that the Petitioner's employment at that facility was full-time. Without independent, objective evidence resolving this inconsistency, we are unable to verify the accurate length of the Petitioner's employment at [redacted] Hospital, nor are we able to gauge whether the Petitioner's employment at Hospital [redacted] during an overlapping period was plausible given his allegedly full-time position at another hospital. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring petitioners to resolve inconsistencies in the record). Although the Petitioner also provided several reference letters verifying his employment at [redacted] Hospital, none state whether such employment was full- or part-time.

The above employment claims aside, the Petitioner's résumé, but not the Form ETA 750, also states that he was employed as a nurse technician from January 2005 to June 2008. However, because the Petitioner is claimed to have held this petition prior to having attained a bachelor's degree in July 2008, such employment does not count towards the required post-baccalaureate five or more years of progressive experience. *See* 8 C.F.R. § 204.5(k)(2). The Petitioner's résumé further lists three other nursing positions that immediately followed his attainment of the bachelor's degree, but which were also not included in the Form ETA 750. Namely, the résumé states that the Petitioner was employed as an intensive care unit nurse at one facility from January 2009 to February 2010 and at another facility from March 2010 to May 2011, and as a nurse from June 2011 to March 2013. However, we note that the letter submitted to corroborate the Petitioner's claimed employment from January 2009 until February 2010 and from March 2010 to May 2011 was authored and signed by an accountant rather than by an employee of either facility. As it is from the Petitioner's accountant rather than his former employers, the accountant's letter in the absence of other confirmatory documentation has less probative value in supporting the Petitioner's claimed experience. Regardless, because the Petitioner's claimed employment from January 2009 until March 2013 totals to approximately four years of experience, the total experience from all four positions, even if adequately documented, would not be sufficient to establish that the Petitioner attained the required five or more years of progressive experience in his specialty. *Id.* Accordingly, without resolution of the overlapping claimed full-time employment from 2013 to 2015, and the other issues noted above, we cannot conclude that the Petitioner meets the requirements for an advanced degree professional.

[4] Item 3 of ETA 750 Part B lists the Petitioner's status in the United States as that of F-1 nonimmigrant. Although this form was not dated, it appears to have been submitted together with Form I-944, Declaration of Self-Sufficiency, which the Petitioner signed and dated "11/18/20."

Notwithstanding our adverse determinations regarding the Petitioner's eligibility for the EB-2 classification, due to the Director's oversight in not addressing the Petitioner's alternate claim that he is an advanced degree professional, we note for the record, but will not dismiss the appeal based on evidentiary deficiencies associated with the Petitioner's claims regarding his EB-2 qualifications.

III. NATIONAL INTEREST WAIVER

Despite determining that the Petitioner's proposal to work as a nurse has substantial merit, the Director concluded that the Petitioner did not satisfy the national importance portion of the first prong or the requirements of the two remaining prongs. Therefore, the next issue to be addressed in this decision is whether the Petitioner has established eligibility for a national interest waiver under the first prong of the *Dhanasar* framework specifically related to national importance.[5]

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We determined in *Dhanasar* 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. We also stated that "[a]n 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.* at 890.

We agree with the Director's favorable determination regarding the substantial merit of the Petitioner's endeavor and will therefore focus our discussion on whether the Petitioner's proposed endeavor is of national importance.

In this instance, the Petitioner provided a professional plan where he discussed his intent to employ "the most modern [n]ursing strategies and techniques" to ensure "exponential growth" in the U.S. nursing field. He also highlighted his "wide range of skills in [n]ursing," stressing his versatility in being able to work in different settings, such as pediatric, neonatal, adult nursing, emergency risk auditing, and intensive care, and claiming that his "specialized services" will result in "broad implications" for nursing in the United States. However, the Petitioner did not specify or describe specific strategies or techniques he plans to use in his proposed endeavor. And although the Petitioner intends to take an active role in controlling and preventing hospital infections, he did not explain how his knowledge and abilities will go beyond impacting the workplaces and patients he plans to service.

The Petitioner also discussed his academic background and work experience, which were further addressed in letters of recommendation from the Petitioner's professional acquaintances. However, the Petitioner's knowledge, skills, education, and experience are considerations under *Dhanasar*'s

[5] While we do not discuss each piece of evidence, we have reviewed and considered each one.

second prong, whether the Petitioner is well positioned, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is the first prong, which seeks to determine whether the Petitioner has demonstrated the national importance of his proposed work. Further, although the authors of the recommendation letters praise the Petitioner's abilities as a nurse and nurse supervisor, indicating their high regard for the Petitioner and his work, such letters offer no persuasive detail concerning the impact of the proposed endeavor or how such impact would extend beyond the Petitioner's prospective patients and employers. Given the noted deficiencies, the recommendation letters are not probative of the Petitioner's eligibility under the first prong of *Dhanasar*.

In addition, the Petitioner provided numerous industry reports and articles, including those about nursing occupations, the nursing shortage, and statistics on the nursing industry. While these reports and articles demonstrate the importance of the nursing field, they are not sufficient to support a finding that the Petitioner's specific proposed endeavor has national importance. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id*. at 889. Here, the articles and reports do not mention the Petitioner's specific proposed endeavor or demonstrate how its impact would rise to the level of national importance.

On appeal, the Petitioner contends that his ability to treat pediatric patients in emergency and intensive care settings "enhances and improves the health and well-being of U.S. citizens" because it will address "national concerns," such as maintaining an "optimum nurse-to-patient ratio, reducing the nursing shortfall[,] and promoting growth of the profession." Relying on the premise that "[e]ach nurse is an integral part of the health-care system," the Petitioner asserts that his work will have national implications on the healthcare field, stating that most full-time nurses see three or more patients per hour and thereby impact millions of patients. However, the Petitioner does not identify the source of this information to establish its accuracy, nor does he establish that seeing an average of three patients per hour, assuming that he would achieve such metrics in carrying out his endeavor, would impact the healthcare system or the nation on a broader scale, as opposed to having a more limited impact on the patients he would serve.

Further, the Petitioner's discussion about the national nursing shortage and the exacerbation of that shortage by the COVID-19 pandemic focuses on the field of nursing; such information does not, however, focus on the Petitioner's specific endeavor or establish that the Petitioner's specific endeavor would impact the overall nursing field thereby rising to the level of national importance. In short, the Petitioner does not explain how his endeavor to work as a nurse would impact the national nursing shortage, the healthcare field, or the nation as a whole. Although the Petitioner seeks to demonstrate the national importance of his endeavor through claims that the endeavor extends beyond his employer and patients, he has not adequately supported these claims with reliable information about his endeavor's prospective impact on the field of nursing or the nation. Despite the substantial merit of the Petitioner's proposed endeavor, the record does not establish by a preponderance of the evidence that the endeavor meets the first prong of the *Dhanasar* framework related to national importance.

IV. CONCLUSION

The documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. As such, the Petitioner has not demonstrated eligibility for a national interest waiver and further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

Accordingly, because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any evidence or arguments concerning the Petitioner's qualification for classification under section 203(b)(2) of the Act or his eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

As the Petitioner has not met the national importance requisite within the first prong of the *Dhanasar* analytical framework, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.