U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8355231

Date: SEPT. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a physical therapist and entrepreneur who 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).

The Director of the Texas Service Center determined that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] Specifically, applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has national importance,[2] (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. *Id.* 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 did not establish that her specific proposed endeavor has national importance and thus, she did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at

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[1] Although the Director did not determine whether the Petitioner qualifies for the underlying EB-2 visa classification, the Petitioner has not established her eligibility for a national interest waiver on appeal and we therefore do not need to remand the decision for the Director to make an EB-2 determination. We further note that the Petitioner's diploma and corresponding transcript show that she attended Universidade [redacted] in Brazil where she completed a physical therapy program from 2006 until 2008 resulting in a "Título de Bacharel" degree. According to the American Association of Collegiate Registrars and Admissions Officers Electronic Database for Global Education, the "Título de Bacharel" may be attained after three to five years of study and therefore does not establish that the Petitioner completed four years of undergraduate study. As such, the record does not show that the Petitioner attained the equivalent of a U.S. bachelor's degree followed by five years of progressive experience in the specialty and would need to address this deficiency in any future proceedings. *See* 8 C.F.R. § 204.5(k)(2) (requiring a U.S. bachelor's degree or foreign equivalent followed by five years of progressive experience in the specialty to determine that a petitioner is an advanced degree professional).

[2] The Director's decision referred to and concurred with USCIS's favorable finding on the issue of substantial merit in the previously issued request for evidence (RFE).

884. Because 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 two remaining *Dhanasar* prongs. *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).

In addressing the issue of national importance, the Director concluded that the Petitioner did not show that her endeavor would impact the field of physical therapy on a broader scale beyond her individual clients or that its impact would rise to the level of national importance. The Director also rejected the Petitioner's argument that a shortage of physical therapists warrants waiver of the labor certification requirement, noting that such shortage would instead likely be viewed as "a positive factor" in favor of granting the labor certification a national interest waiver is not granted based upon need. And despite acknowledging the hiring projections in the Petitioner's business plan, the Director pointed to the lack of evidence showing that the Petitioner's endeavor would offer California or its residents a substantial economic benefit through employment levels or business activity. The Director also addressed an industry report that the Petitioner submitted, pointing out that the report discusses the impact of physical therapists collectively rather than the impact of the Petitioner's specific endeavor, as stressed in the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 884. Ultimately, the Director determined that the Petitioner did not provide evidence that her specific endeavor as a physical therapist, rather than the cumulative effect of all physical therapists, stands to have national or global implications.

On appeal, the Petitioner argues that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of this within the Director's request for evidence (RFE) or denial. Importantly, the Petitioner also does not offer a detailed analysis explaining the particular ways in which the Director "imposed novel substantive and evidentiary requirements" in denying the petition.

The Petitioner further alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard . . . to the detriment of the appellant." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for the EB-2 classification and a national interest waiver, she does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner also argues that the Director did not "give due regard" to her résumé, business plan, letters of recommendation, or the industry reports she previously submitted. However, as noted above, the Director specifically mentioned the hiring projections in the Petitioner's business plan and addressed an industry report the Petitioner previously submitted, explaining how the evidence falls short of demonstrating the national importance of the proposed endeavor. Further, while the Petitioner

stresses her credentials and work experience, which were also highlighted in her résumé and recommendation letters, such evidence addresses the Petitioner's knowledge, skills, education, and experience; these are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 890. Evidence of the Petitioner's credentials and experience in the field of physical therapy does not demonstrate the national importance of the proposed endeavor or establish that the impact of the endeavor would extend beyond the Petitioner's patients and prospective employees of her business. In sum, the Petitioner primarily focuses on second prong factors that demonstrate her knowledge and experience and makes no compelling arguments explaining how her endeavor's impact would attain the level of having first prong national importance.

Accordingly, we adopt and affirm the Director's analysis and decision regarding the national importance of the Petitioner's endeavor. *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 the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). As noted above, we reserve the Petitioner's appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.