U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28434745

Date: SEPT. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a dentist 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 his endeavor has national importance,[2] (2) did not demonstrate that he 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 his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. at 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).

[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.

[2] The Director concluded that the Petitioner's endeavor has substantial merit.

In denying the petition, the Director pointed out that the Petitioner altered his proposed endeavor after being issued a request for evidence (RFE) where he was notified that his initial claimed endeavor to work as a dentist was not shown to have national importance. The Director noted that at the time of filing, the Petitioner stated that his endeavor was "to work with American dental clinics" where he would use his experience in dental surgery and implants. The Director observed that in response to the RFE, the Petitioner made a material change to the original endeavor by adding an entrepreneurial element that would involve the Petitioner opening and serving as the CEO of his own dental clinic. We note that in the original supporting statement, the Petitioner described his proposed endeavor as "contribut[ing] to U.S. dental clinics [] by helping to improve their management, organization, and control practices as well as ensuring quality services." The Director correctly stated that eligibility must be established at the time of filing and that material changes cannot be considered in determining the Petitioner's eligibility for a national interest waiver. Material changes notwithstanding, however, the Director considered the altered endeavor and concluded that neither it nor the Petitioner's original endeavor was shown to have national importance.

Although the Director acknowledged the Petitioner's submission of an expert opinion letter, which states that dental health has national importance, the Director pointed out that the national importance analysis focuses on the specific endeavor rather than the general analysis of the expert opinion letter regarding the industry of that endeavor. The Director determined that in this case, the Petitioner's various endeavors were not shown to potentially benefit the regional or national economy in a way that would rise to the level of having national importance. And despite acknowledging the various growth projections in a business plan that discussed the Petitioner's revised endeavor to own and operate a dental clinic, the Director determined that the Petitioner neither provided corroborating evidence in support of those projections nor demonstrated that this endeavor would result in substantial positive economic effects for the nation. Regarding the latter, the Director pointed out that the record contained no evidence that the Petitioner registered his business or hired any employees, which might support the projections in the business plan. The Director also acknowledged the Petitioner's submission of support letters but determined that such letters lacked any discussion of the proposed endeavor or its national importance and instead focused on the Petitioner's skill and experience, factors that are more relevant to the second prong of well-positioned. Ultimately, the Director determined that the Petitioner's original endeavor to work as a dentist in a U.S.-based dental clinic: (1) does not stand to impact the regional or national population; and (2) has not been shown to have broader implications for the field of dentistry. As such, the Director concluded that the Petitioner's proposed endeavor does not rise to the level of having national importance.[3]

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.

[3] Despite noting that material changes in the proposed endeavor would not be considered, the Director nevertheless determined that the Petitioner did not demonstrate that his altered endeavor – to own and operate a dental practice – has national importance.

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 he has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, he 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 his proposed endeavor "is a vital aspect of U.S. dental operations and productivity" and that it is "national in scope, as [the Petitioner's] professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key health activities on behalf of the United State." However, the Petitioner has not provided evidence to demonstrate that his work as a dentist, whether in the context of his own or someone else's dental practice, would result in an impact of regional or national importance or that he would operate on such a scale as to rise to the level of national importance.

In addition, the Petitioner contends that the Director did not "give due regard" to his résumé, business plan, letters of recommendation, or the industry reports that were previously submitted. However, as noted above, the Director specifically mentioned the Petitioner's business plan and recommendation letters, explaining how the evidence falls short of demonstrating the national importance of the proposed endeavor. Further, while the Petitioner stresses his credentials and work experience, which were also highlighted in his résumé and the 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 dentistry 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 employers. In sum, the Petitioner primarily focuses on second prong factors that demonstrate his knowledge and experience.

Lastly, although the Petitioner argues that he will have a dental practice that will "benefit the U.S. by creating jobs and economic stability," we note that a petitioner must establish eligibility based on the facts and circumstances that existed when the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). 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). As noted in the Director's denial, after having been issued an RFE where he was notified of various evidentiary deficiencies concerning his original endeavor to work as a dentist in U.S. dental clinics, the Petitioner materially altered that endeavor to include owning and operating a dental clinic. That said, however, the Petitioner offers no compelling arguments explaining how either his original or the altered 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.