U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25730607

Date: MAR. 29, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, medical scientist, 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 denied the petition, concluding the record did not establish the Petitioner is well positioned to advance his proposed endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. 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 an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

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).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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[1], 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. ANALYSIS

A. Advanced Degree Professional

Although the Director determined the Petitioner qualifies for the EB-2 classification as an advanced degree professional, we withdraw that finding and instead conclude that the evidence does not establish the Petitioner qualifies for the underlying EB-2 classification. We reviewed the Petitioner's foreign "undergraduate degree certification" for a doctor of medicine degree and his foreign "certificate of graduation" for a master of medicine degree. However, these appear to be the English translations of the Petitioner's academic credentials and not copies of the original certificates.[2] In addition, the record does not contain corroborating evidence of these degrees, such as the Petitioner's transcripts. We reviewed the academic equivalency evaluation from Park Evaluations but conclude that it is insufficient to establish that the Petitioner has the equivalent of a U.S. advanced degree. The evaluator stated that he based his conclusions upon the courses completed, credit hours earned, and transcripts; however, the Petitioner has not submitted such information and documents for our review. Therefore, the record does not support a finding that the Petitioner qualifies as an advanced degree professional.[3]

B. Substantial Merit and National Importance

The Director determined that the Petitioner established eligibility under the first Dhanasar prong; however, we withdraw that finding and conclude that the record does not support a finding of eligibility under this criterion. While we do not discuss each piece of evidence, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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 whether the proposed endeavor has national importance, we consider its potential prospective impact. Dhanasar, 26 I&N Dec. at 889.

The Petitioner described his proposed endeavor as creating a "good medical environment for health and welfare of local residents." Specifically, he stated verbatim that he will:

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[1] 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).

[2] The Petitioner provided a certificate of accuracy in the translation of these credentials.

[3] The Petitioner has not asserted that he qualifies as an individual of exceptional ability. Therefore, we do not analyze this issue.

> [E]ndeavor to make the Korean medical system helpful for the United States by utilizing my previous practical experience in medical associations such as the Korean Medical Association and the [redacted] Medical Association. I will persuade and inspire them to continuously provide their advanced medical technologies, findings and other resources to the medical institutions and corporations in the United States, and also persuade many corporations and investors in Korea to invest their funds to the medical industry in the United States. Furthermore, I will also introduce the latest medical technologies and equipment from the United States to Korea, and enable them to be widely and rapidly disseminated and sold within Korea corporations there. I expect that these will bring enormous benefit not only to the medical community but also to the entire industry and economy in the United States.

In response to the Director's request for evidence, the Petitioner explained that he will:

> [C]onduct[] medical research in the United States to bring the advanced medical technologies and investments to the United States, and conduct the business to widely disseminate the latest medical technologies and equipment from the United States to Korea and have them sold within Korea. For these research and business activities, a medical license is not required. A medical license is required to treat patients, which the petitioner never said he would do in the United States.

To carry out these functions, the Petitioner intends to establish his own company. The Director noted that the Petitioner plans to "contribute to a large number of patients and medical researchers, practitioners, institutions and corporations and thus will substantially benefit the country particularly in the field of Ophthalmology. . . ." The Director determined this endeavor is nationally important because his "activities in the U. S. will not only bring his own techniques and research findings to the U.S. but will also stimulate the inflow of the highly advanced and leading national medical technologies and research findings of various major medical societies and institutions in South Korea."

Although we acknowledge the Director's determination, we conclude that the evidence does not sufficiently establish what research, techniques, or technologies, the Petitioner would provide the United States, such that we may determine how they might impact the field or the United States as a whole. The Petitioner has not identified a specific research area within the field of ophthalmology, nor has he described any specific technique or technology that he proposes to bring to the United States. Furthermore, the Petitioner has not explained how the sale of U.S. medical technologies and equipment to South Korea would benefit the United States on a scale commensurate with national importance. For example, the Petitioner has not explained how the sales would provide substantial positive economic effects to the United States. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. We conclude that the Petitioner has not provided sufficient details concerning what his proposed endeavor involves and what its prospective impact would be. Because the Petitioner has not identified what the specific techniques, research, and technologies are, we cannot conclude that their impact in the United States would rise to the level of national importance.

We reviewed the recommendation letter from [redacted] which states that the Petitioner significantly contributed to his 2006 [redacted] research; however, the record does not sufficiently demonstrate the Petitioner's specific role in this research or how the [redacted] research influenced the field. Even if this were explained, the Petitioner would still need to establish how the [redacted] process or research is better or different than that which is already offered in the United States, such that proposed endeavor activities involving it would be of national importance to the United States. Furthermore, the record does not clarify what, if any, research the Petitioner has conducted more recently than 2006.

[redacted] also suggests that the Petitioner raised a medical issue to the government for investigation, that an investigation occurred, and as a result of it, the distribution and sale of a particular product with harmful side effects ended. The letter, however, does not explain how the Petitioner raised the issue to the government, what aspects of the process or investigation involved the Petitioner, or the timeline for these events.[4] [redacted] statements do not offer sufficient corroborative details to support a finding that the Petitioner has influenced the field, nor do they explain how the Petitioner would offer the same or similar benefit to the United States.

Although [redacted] notes that the Petitioner has his own "techniques," research findings, and "access to advanced and innovative technologies," the letter does not explain what the techniques, research, or technologies are, such that we can determine how the Petitioner might use them to benefit the United States on a nationally important scale. As stated, it is not apparent whether the technique or technology is already available in the United States or how the Petitioner would disseminate it such that the benefits of it would rise to a level of national importance.

A recommendation letter from the Head Sister at the Sisters of Mary, [redacted] Branch states that the Petitioner treated a large number of uninsured patients using more effective treatment techniques. While the author suggests that the Petitioner can convey his effective skills in treating such high patient loads to U.S. medical doctors, the letter does not contain evidence of how many more patients the Petitioner could treat than a doctor in the United States, nor does it explain how his techniques are more effective or efficient than those the United States already implements. As such, it is difficult to gauge how similar activities would impact the United States, if at all.

Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the reference letters do not provide details sufficient to establish the proposed endeavor's impact; therefore, they are not probative of the Petitioner's eligibility under the first prong.

[4] The accompanying media articles concerning the investigation of side effects do not offer sufficient details concerning the Petitioner's role in raising the issue or conducting the investigation, nor do the articles indicate when these events occurred.

For the foregoing reasons, we conclude that the Petitioner has not sufficiently established the impact of the proposed endeavor such that we can determine its national importance. Therefore, the record does not support a finding of the Petitioner's eligibility under the first Dhanasar prong.

C. Well Positioned to Advance the Proposed Endeavor

The Director determined the record did not establish the Petitioner's eligibility under the second prong. We agree. The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Dhanasar, 26 I&N Dec. at 890.

The Petitioner submitted numerous certificates indicating his election, appointment, and designation as the director, president, member, chairman, or delegate of various committees and associations. He also provided evidence of documents he signed on behalf of the [redacted] concerning a memorandum of understanding (MUM) to block a Korean company's attempts to implement unfavorable new policies.

He stated that his influence over various associations as well as his partnerships with several medical institutions in [redacted] establish his ability to influence and persuade them to devote resources and technology to the United States. Even if the Petitioner had established that he currently maintains partnerships and agreements with these associations and institutions, this would be insufficient to evidence that they have any knowledge of or interest in the Petitioner's plans to influence and persuade them. While the Petitioner stated that he has the ability to influence and persuade, he has not explained how he will do this. Although some institutions pledge general support to partner with the Petitioner to improve public health or develop the medical field, the Petitioner has offered little evidence that they are willing to devote any resources or technology to the United States. Furthermore, some of the Petitioner's certificates indicate that his election or appointment to a particular role within the organizations has expired.

Counsel emphasized that because "these top national institutions and societies only select the most competent professionals in the field to serve their level of reputation, influence and the crucial roles they are performing for the entire nation . . ." their selection of the Petitioner indicates his contribution and influence over the field. However, the record contains little evidence to establish the standing of these institutions and societies or their process for selecting professionals. The unsupported assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

Likewise, as evidence of his past achievements in the field, Counsel explained that leading media organizations have interviewed and quoted the Petitioner in his official capacity as president of the [redacted] We reviewed the media articles interviewing and quoting the Petitioner; however, Counsel has not submitted evidence to support his assertion that "these top media outlets will not just quote anyone's comments unless they consider that person to be among the most trustworthy professionals in the entire nation with the most accurate and reliable information." Even if the record contained evidence supporting these assertions, this would not establish how the

Petitioner's role and influence in Korea, positions him well to carry out his proposed endeavor in the United States.

As stated, it is not apparent what technique, research, or technology the Petitioner has to offer the United States or how he would disseminate it through his company. The Petitioner has not sufficiently explained how he will conduct research or, as the owner of his own company, know of the research conducted in this United States. It also remains unclear how the Petitioner would maintain access to South Korean advanced and innovative technologies while in the United States. Similarly, he has not explained how he is well positioned to know of the techniques and technologies in the United States such that he would have a basis for advancing endeavor. Although he submitted a business plan, the Petitioner offers little evidence of his progress in carrying out such plans or anyone interested in his services. The Petitioner has not explained how he will fund his endeavor. The Sisters of Mary pledge to provide the Petitioner "a lot of support," but do not explain what that means or whether this support is financial in nature. Regarding sales, the Petitioner has not explained what medical technology or equipment he plans to sell, which entities in South Korea will buy it, and how he would facilitate such sales.

For the foregoing reasons, the Petitioner has not established he is well positioned to advance his endeavor. Therefore, the record does not support his eligibility under the second Dhanasar prong.

III. CONCLUSION

As the Petitioner has not met the requirements of the underlying EB-2 classification, or the requisite first and second prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. Further analysis of his eligibility under the third prong outlined in Dhanasar would serve no meaningful purpose.[5] The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[5] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under 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).