



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20800833

Date: JUNE 15, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks second preference 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen’s qualifications or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also found that the Petitioner established that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889-90. However, the Director found that the record did not satisfy the second and third *Dhanasar* prongs. *See id.* at 888-91.

Although the record establishes that the proposed endeavor has substantial merit, we conclude that it does not establish that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, for the reasons discussed below. *See id.* at 889-90. Initially, the Petitioner described the endeavor as a plan “to continue using my expertise and knowledge in the field of [p]hysical [t]herapy.” The Petitioner elaborated that her “career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients.” The Petitioner further stated:

My specific endeavor will potentially impact the U.S[.] in the following ways:

- Fill a position as a [p]hysiotherapist/[p]hysical [t]herapist that is vacant due to a large demand for physical therapists but lack of qualified physical therapists;
- Provide patients with a proper diagnosis;
- Educate other physical therapists/physiotherapists on proper techniques and treatments;
- Monitor and manage other therapists, assistants, and others involved in the diagnosis and recovery process;

Economic Benefits

- Optimizing the lives of patients that suffer from illnesses and injuries;
- Reduce the amount of time patients spend in the hospital;
- Increase the quality of life of patients dealing with different illnesses and injuries through personalized treatment, allowing them to participate in the community;

Social Benefits

- Improve comfort and health of patients;
- Minimize use and reliance of assistive devices;
- Increase overall morale and mobility of patients through treatment.

In a request for evidence (RFE), the Director informed the Petitioner, in relevant part, that the initial evidence “has not established that her proposed work for has [*sic*] implications beyond her prospective

² *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

employer and its clients at a level sufficient to establish the national importance of his [*sic*] endeavor.” The RFE sought, among other things, evidence to establish that the proposed endeavor has national importance. In response to the RFE, the Petitioner supplemented her statement of the proposed endeavor: “My career plan in the United States is to support the physiotherapy needs of hospitals, outpatient clinics, medical organizations, and, most of all, patients.” In addition to reiterating topics in the initial bullet-point list quoted above, the Petitioner added in response to the RFE that her “treated patients will also be able to reintegrate into society, and thus contribute to the U.S. economy.”

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The proposed endeavor of “work[ing] with a health care facility to provide expert advice and treatment to patients” will benefit the unspecified employer—whether it is a hospital, outpatient clinic, or other medical organization—and the Petitioner’s patients at that healthcare facility. The endeavor may also benefit fellow physical therapists that the Petitioner educates at that healthcare facility, and those therapists’ patients. However, the record does not establish how the endeavor will rise to the level of having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90. The record does not establish that the Petitioner’s plan to be employed at a healthcare facility would create a significant potential to employ other U.S. workers or other substantial positive economic effects, and even if it did, the Petitioner does not specify her intended workplace and establish whether that workplace is in an economically depressed area. *See id.*

The Petitioner’s discussion of her qualifications and prior career accomplishments relate to the second *Dhanasar* prong, whether she is well-positioned to advance the proposed endeavor, not the first *Dhanasar* prong, whether the proposed endeavor has both substantial merit and national importance. *See id.* at 888-90. In turn, the Petitioner’s discussion of the role of physical therapists in general and her discussion of healthcare industry trends in general do not address the “specific endeavor that the foreign national proposes to undertake” and how it may have national importance. *See Dhanasar*, 26 I&N Dec. at 889. Based on the foregoing, we withdraw the Director’s conclusion that the record established that the proposed endeavor has national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore she is not eligible for a national interest waiver. Moreover, as the Director concluded, the record does not establish that the Petitioner is well-positioned to pursue the endeavor, as required by the second *Dhanasar* prong. *See id.* at 888-91. Specifically, the record does not establish that, at the time of filing the petition, the Petitioner held a license to practice physical therapy in the United States, or even that she would be qualified to take an exam to

obtain such a license. We reserve our opinion regarding whether the record satisfies the third *Dhanasar* 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).

III. CONCLUSION

As the Petitioner has not met either of the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.