



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

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

In Re: 28050445

Date: AUG. 23, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physical therapist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

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<sup>1</sup> *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).

- 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

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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 Petitioner intends to work in the United States as a physical therapist and entrepreneur. She submitted a professional plan describing her proposed endeavor as follows:

My career plan in the United states is to open my own physical therapy clinic (company) [REDACTED] to work with a healthcare facility and provide expert advice and treatment to patients, in addition to possibly working to teach new Physical Therapists. I will provide patients with quality care and treatments in the areas of respiratory and cardiorespiratory therapy, musculoskeletal, neurosciences, chronic pain sciences, pediatrics, geriatrics (seniors), sports physical therapy, women's health, and massage therapy.

Specifically, I plan to apply the skills I have acquired in over 10 years of work in the healthcare industry to open a clinic that will provide physical therapy and wellness services to support the recovery of the injured patients, chronic pain sufferers, and post-COVID and post-surgical patients. Chronic pain is a major global health issue and with profound social and economic impacts and a proven difficulty in treatment. The Centers for Disease Control (CDC) yields prevalence estimates for chronic pain ranging from 19% to 43% or about 116,000,000 Americans resulting in activity limitations and labor restrictions.

. . .

Through my physical therapy center, I will also be able to focus on helping patients with serious cardiovascular or pulmonary problems gain independence. Physical therapy can grow strength in key muscle groups and improve patient endurance. There is also physical therapy related to injuries of bones, muscles, ligaments, and joints. Injuries such as fractures, strains, and sprains may be treated with a variety of techniques, including manual therapy and electrotherapy.

. . .

Overall, Physical Therapy has a positive effect on the U.S. and is a high-growth industry, from home care to the care administration in clinics. My experience will allow for even more highly skilled physical therapists to enter the healthcare field in the U.S., which will curb the shortage, increase revenue, benefit the economy, and enhance overall patient health. My extensive career, working with patients with a wide array of injuries and illnesses will be beneficial to the US healthcare industry, which is experiencing a high demand for physical therapists of my caliber. The United States needs more professionals, such as I, that are committed to helping patients regain movement and improve their quality of life.

Regarding the potential impact of her endeavor, she claimed that her proposed endeavor will positively impact the United States because it will allow her to:

- Fill a position as a Physical Therapist and Entrepreneur that is vacant due to a high demand for physical therapists but lack of qualified physical therapists;
- Assist and work in the rural and economically underserved areas to improve their physical therapy treatments and create jobs;
- Provide patients with a proper diagnosis;
- Educate other physical therapists on proper techniques and treatments; and
- Monitor and manage other therapists, assistants, and others involved in the diagnosis and recovery process.

The Petitioner also submitted a business plan for her proposed clinic, which demonstrated that she intended to commence operations with four employees: a CEO, a controller, and two physical therapists. The plan further indicated that by the fifth year of operations, the clinic would employ 15 individuals, including the Petitioner. The Petitioner also supported the record with an opinion letter, industry articles and reports, and letters of support, as well as her academic credentials and evidence of her professional achievements.

In a request for evidence (RFE), the Director informed the Petitioner that she had not submitted sufficient evidence to demonstrate that her proposed endeavor had national importance. The Director noted the evidence submitted but observed that the Petitioner's business plan did not provide sufficient evidence that her company "would employ a significant population of workers in an economically depressed area" or that her endeavor "would offer Florida or its population a substantial economic benefit through employment levels or business activity." Thus, the Director requested additional evidence that may establish the specific proposed endeavor has national importance, as required.

In response to the Director's RFE, the Petitioner resubmitted her business plan and emphasized that her clinic anticipated paying wages in the amount of \$2.96 million during its first five years of operations. She also relied on industry articles and reports in support of her assertion that her endeavor had national importance, noting that physical therapists "play an important essential role in the advancement of medical research, evidence-based practice and professional development, thus contributing to the overall health of the nation."

The Petitioner also submitted additional letters of recommendation in support of her eligibility.

In denying the petition, the Director concluded that although the proposed endeavor had substantial merit, the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance. The Director determined that the Petitioner did not demonstrate that the benefits of her proposed U.S. employment would reach beyond her patients and clients to affect her field or the United States more broadly. The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs, as required. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner asserts that her proposed endeavor has national importance because it "generates substantial ripple effects upon key therapeutic activities on behalf of the United States," and "is a vital aspect of U.S. medical operations and productivity – which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." She further states that her proposed endeavor to work as a physical therapist will have substantial economic and social effects that will optimize the lives of patients that suffer from illness and injuries and will improve their comfort, health, and overall mobility.

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 [noncitizen] proposes to undertake." *See id.* 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.

Preliminarily, we note the Petitioner's submission of generalized publications, reports and articles regarding the field of physical therapy, anticipated industry growth and treatment trends, and the shortage of physical therapists in the industry. Although these documents indicate that the Petitioner's proposed work as a physical therapist has substantial merit, in determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake."<sup>2</sup> *See id.* at 889. Furthermore, even if the Petitioner was able to establish a shortage of physical therapists in the United States, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone would not demonstrate that waiving the requirement of a labor certification would benefit the United States. Moreover, none of the documents submitted establish that the benefits of working as a physical therapist in her own clinic, the proposed endeavor, would extend beyond her patients and clients in a manner that could be considered of national importance.

The record contains an expert opinion letter from a professor of anatomy at the [redacted] in New York who concludes that the Petitioner's proposed work has national importance. But the

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<sup>2</sup> The issue here is not the value of physical therapy as an effective means of treatment and pain management, but rather whether the Petitioner's specific proposed endeavor as a physical therapist rises to the level of national importance.

professor does not base his conclusion on the national importance of the Petitioner's specific endeavor. Although he recites the Petitioner's career history and accomplishments, his findings stem from the significance of the physical therapy profession, and his observation that the Petitioner's "sophisticated knowledge of the Brazilian Healthcare Industry would help U.S. companies that are doing business or planning to do business in Brazil successfully seize market and investment opportunities and optimize their legal, marketing, and sales capabilities in one of the largest economies in the world and the largest economy in Latin America." While the professor's observations regarding the optimization of investment opportunities in the United States are noted, he does not articulate how the Petitioner's specific proposed endeavor of establishing a physical therapy clinic in Florida will have significant potential to employ U.S. workers or will have substantial positive economic effects in an economically depressed area. The letter, therefore, does not establish the national importance of the Petitioner's specific proposed U.S. work. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or "is in any way questionable").

The Petitioner also submitted numerous support letters from Brazilian physiotherapists, as well as a letter from the Director of the [redacted] of Therapeutic Massage and Yoga, who commend the Petitioner's skills and abilities. Her physiotherapist colleagues praise many of her personal characteristics and her record of achievements without explaining the nature of the impact of her achievements. In addition, the letter from the Director of the [redacted] of Therapeutic Massage and Yoga confirms the Petitioner's completion of a course of training with the school and attests that her client feedback upon graduation has been "more than expect[ed]." However, none of these letters elaborate on how her treatment of patients affected or influenced other physiotherapist or physical therapists, or otherwise elevated the Petitioner above her peers.

The Petitioner's proposal to establish a physical therapy clinic appears to benefit the Petitioner's potential patients and clients to whom she may provide care. However, the record does not establish how diagnosing and treating an unspecified number of individual patients as a physical therapist working at a single healthcare facility may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a physical therapist in her own clinic rises to the level of national importance. Because the record does not establish how the Petitioner's endeavor may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects, it does not establish the proposed endeavor has national importance. *See id.*

Finally, the Petitioner's reliance throughout the record on her academic and prior employment history is misplaced. Although an individual's academic and prior employment history are material the second *Dhanasar* prong - whether an individual is well positioned to advance a proposed endeavor - they are immaterial to the first *Dhanasar* prong, which pertains to whether the prospective endeavor has both substantial merit and national importance. *See id.* at 888-91.

In sum, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or 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 the requisite first prong 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.