



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

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

In Re: 27674221

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks employment-based second preference (EB-2) immigrant 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. While the Director determined that the Petitioner's proposed endeavor is of substantial merit, he concluded that the endeavor is not of national importance. The Director also concluded that the Petitioner has not established 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 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).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 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.²

II. ADVANCED DEGREE

Neither the request for evidence issued by the Director nor the subsequent denial notice provided a determination of whether the Petitioner submitted sufficient evidence to show that she is a member of the professions holding an advanced degree. Therefore, we will reserve the issue of whether she qualifies for the underlying EB-2 classification.

III. NATIONAL INTEREST WAIVER

The Director determined that the Petitioner did not meet the first or third prongs of the *Dhanasar* framework. On appeal, the Petitioner alleges that, rather than applying the governing standard of review, preponderance of the evidence,³ the Director “imposed novel substantive and evidentiary requirements beyond those set forth in regulations.” Although the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director denied her petition applying a standard of proof other than that of preponderance of the evidence.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework. 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, who was previously employed as a physiotherapist in Brazil, intends to provide physical therapy services in [REDACTED] Florida. The Petitioner initially described her proposed endeavor as follows:

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

³ See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

My career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients, in addition to possibly working to teach new Physical Therapists. 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 specific endeavor will potentially impact the U.S. in the following ways:

- Fill a position as a Physical Therapist that is vacant due to a high demand for physical therapists but lack of qualified physical therapists;
- 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.

Economic Benefits

- Optimizing the lives of patients that suffer from illnesses and injuries;
- Reduce the amount of time patients spend in the hospital; and,
- 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; and,
- Increase overall morale and mobility of patients through treatment.

Regarding the first prong, the Director found that the proposed endeavor had substantial merit; however, the Director issued a request for evidence (RFE) to, in part, establish the national importance of the proposed endeavor. In response, the Petitioner provided a statement and a business plan describing her intention to “develop a health care services company, [redacted] in the state of Florida” (emphasis in the original), where she “will generate jobs for U.S. workers, as well as significant and profitable opportunities for the national economy.” The Petitioner states that she intends to serve as the company’s chief executive officer, which she describes in her business plan as both “owner” and “primary consultant.” The Petitioner’s business plan states that the “aim is to provide post rehabilitation services to patients discharged from the hospitals and Skilled Nursing Facilities.” The business plan shows that she intends to hire registered nurses, licensed clinical social workers, licensed practical nurses, physical therapists, medical assistants, a director of operations, an intake coordinator, a billing specialist, a field marketing representative, and a scheduler, among other positions.

The Petitioner’s initial description of her proposed endeavor did not indicate plans to form a company; the Petitioner initially intended to “work with a health care facility” and to possibly provide instruction to new physical therapists. We conclude that the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. A visa petition may

not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish and manage a company were presented after the filing date; as such, the amended endeavor cannot retroactively establish eligibility.

In response to the Director's request for evidence to demonstrate how her services would rise to the level of national importance, the Petitioner has materially changed her proposed endeavor. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Notably, the Petitioner does not explain how she would allocate her time between performing physical therapy services initially described as part of her stated endeavor, if any, and serving in a managerial role at her company. Accordingly, we conclude that both the focus of her endeavor as well as her field of endeavor have materially changed. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1). For these reasons, the petition may not be approved.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.* at 890. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* A shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the *Dhanasar* framework.

To assess whether an individual qualifies for a national interest waiver, we must first rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance under the *Dhanasar* analysis. Because the Petitioner has not provided consistent information regarding her proposed endeavor, we cannot conclude that her proposed endeavor has national importance. Even if the Petitioner had not materially changed her proposed endeavor, the evidence of record does not sufficiently demonstrate that her original endeavor to work as a physical therapist in a healthcare facility rises to a level commensurate with national importance. The Petitioner's original description of her intention to work as a physical therapist aligned with that of a successful healthcare worker providing, for example "personalized treatment" to patients and enhancing their quality of life. The Petitioner, however, did not provide an explanation of how her work as a physical therapist would have broader implications in the field or have substantial positive economic effects in a given location or for a specific population. She did not elaborate on her intention to "possibly" teach new physical therapists or otherwise explain how her employment as a single physical therapist would address a national shortage of individuals employed in the field. While we recognize that an endeavor to provide healthcare services has substantial merit, the Petitioner has not demonstrated that her original proposed endeavor is of national importance.

In addition, even if the Petitioner had presented her plans to establish and operate her business at the time of filing, which she did not, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of this revised endeavor under the first prong of the *Dhanasar* analytical framework. For example, the Petitioner's business plan provides a generalized description of the company's marketing and growth strategy in [REDACTED] Florida, as well as a forecast of anticipated case numbers and business expenses; there is no explanation, however, of the origins of those case estimates and business expenses or any indication of how they were calculated. In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her proposed endeavor, as the Petitioner's evidence did not show that her proposed work through the operation and management of her company would have broader implications at a level indicative of national importance.

On appeal, the Petitioner submits a brief in which she insists that the Director's decision was in error and that the evidence of record establishes her eligibility for a national interest waiver. She reiterates that a part of the national importance of her endeavor lies in the fact that there is a shortage of physical therapists in the United States. However, the Petitioner does not explain how her operation of a business employing an indeterminant number of physical therapists would alleviate a shortage at a nationally important level; her business plan does not specify the number of physical therapists to be hired or provide growth projections to demonstrate how the company will realistically hire physical therapists and other positions listed to develop and maintain a fully functional business. The Petitioner provides material related to the importance of hiring employees in the United States in the fields of science, technology, engineering, and mathematics—collectively known as STEM. We note that the practice of physical therapy directly benefits a small number of individual patients, in a manner comparable to the proposed teaching activity of the petitioner in *Dhanasar*. In that decision, we stated, "While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." We therefore concluded that the teaching element of the proposed endeavor lacked evidence of national importance. *Matter of Dhanasar*, 26 I&N at 893. The impact of the Petitioner's work as either a business owner, physical therapist, or potential instructor—or a combination of those occupations—appears to be similarly limited in scope.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to provide physical therapy services for her company's clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893. Here, we conclude that the record does not show that the Petitioner's revised proposed endeavor stands to sufficiently extend beyond her clientele to impact either the physical therapy or home healthcare industry more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her revised proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her company's business activity stands to provide substantial economic benefits to [REDACTED] to Florida, or to the United States. We note that, while

not mentioned in the Petitioner's appeal brief, the cover letter included in the RFE response emphasizes potential investment interest that would positively affect the economy; however, there is no evidence present in the record that elaborates on any investment potential generated by the Petitioner's business proposal. The record does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to establish that the area in which the company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. While the business plan provides a summary of positions that she intends to hire, the plan does not provide details concerning any growth intentions or projections. The Petitioner's unsupported statements are insufficient to meet her burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. While the Petitioner claims that her business "is ready to boost local economies, specifically in the underserved business zones of several states across the United States," she has not shown that the prospective impact of the services offered by her company represents a significant share of either the physical therapy or home healthcare market. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not demonstrated that her proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.