U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26581396

Date: JUL. 14, 2023

Appeal of Texas 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. 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. Section 203(b)(2)(B)(i) of the Act. 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's endeavor would have national importance, that he is well-positioned to advance that endeavor, or that it would be beneficial to the United States to waive the job offer requirement as a matter of discretion. 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. 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)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) 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 benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to continue working as a physical therapist for a professional soccer team in the United States. The Director found that the Petitioner qualifies as an advanced degree professional but does not meet any of the prongs of the *Dhanasar* test. On appeal, the Petitioner provides a brief asserting that the Director failed to properly consider the evidence provided. Upon review, while the Petitioner's endeavor has substantial merit, the record does not establish that it would have national importance.

In the underlying petition and on appeal, the Petitioner emphasizes the importance of physical therapy as a field and the need for more physical therapists in the United States. However, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889-890. For example, an endeavor may qualify if it has national or global implications within a particular field, such as those resulting from medical advances or improved manufacturing processes. *Id.*; *see generally* 6 *USCIS Policy Manual* F.5(D)(1), http://www.uscis.gov/policy-manual.

In this instance, while the Petitioner states that his work has had and will continue to have an impact on the field of physical therapy, he has not provided sufficient documentation to support these claims. We acknowledge the letter from [redacted] stating that the Petitioner was one of the first physical therapists in Brazil to use isokinetic dynamometers and that the protocols the Petitioner developed were then adopted by "other physical therapists and clubs". The petition also includes a statement from the Petitioner indicating that he was "one of the experts" collaborating with a university "by monitoring the use and performance of these devices and providing information about issues found during the equipment operation," and that this "research led to a new proposed design of the isokinetic dynamometer to address the mentioned problems" which was presented at a conference in Brazil in 2013. We also acknowledge the letter from [redacted], an electromedical equipment company, stating that the Petitioner has been "collaborating and providing data from our products" since 2015, that the information he provides helps improve these products, and that the company will continue to work with him in the future.

It is not apparent from the evidence provided how the Petitioner's proposed work as a physical therapist for a professional soccer team, in and of itself, would impact the field of physical therapy on a national level. While the Petitioner's early work with isokinetic dynamometers may have influenced others in his field in Brazil, this occurred over 10 years ago and involved a collaboration with university researchers. There is no indication that he will have such a collaboration in the United States, and the Petitioner does not sufficiently specify what devices or protocols he will test, what injuries or disorders they aid, or how this work could be applicable to the general public, as claimed in his statements. Additionally, it is not apparent how many other physical therapists also provide testing data to [redacted] or to what degree the Petitioner's work for a professional soccer team, in and of itself, will impact that company's products. This does not sufficiently establish what specific national or global implications the Petitioner's work would have in his field.

The Petitioner also states that he will influence his field by mentoring interns and trainees hired by his employer and by speaking at conferences. However, while teaching physical therapy is an activity

with substantial merit, the record does not establish how the Petitioner's teaching, specifically, would influence his field on a level rising to the level of national importance. *See Dhanasar*, 26 I&N Dec. at 893 (stating that teaching science has substantial merit, but cannot be found to have national importance without evidence that these activities will impact the field of science education more broadly). Finally, it is not apparent from the evidence provided what percentage of the Petitioner's time will be devoted to conferences and teaching, as opposed to his regular duties as a practicing physical therapist. For the above reasons, the Petitioner has not demonstrated that his endeavor has significant potential to impact the field of physical therapy.

The record includes extensive materials regarding the shortage of physical therapists in the United States, including notices regarding the Department of Labor's (DOL's) designation of physical therapist as a Schedule A occupation, indicating that there are insufficient U.S. workers able, willing, qualified, and available for physical therapist positions. 20 C.F.R. §§ 656.5, 656.25. *See generally* 6 *USCIS Policy Manual*, *supra* at E.7(C). However, the evidence does not establish how the Petitioner's endeavor, in and of itself, would resolve the shortage of physical therapists or impact it on a national level. Mentoring and teaching other workers in the field does not accelerate the rate at which they are trained on a level that rises to national importance.

Furthermore, the Schedule A designation addresses the shortage of physical therapists by exempting petitioning employers of physical therapists from the requirement of testing the labor market and applying for a permanent labor certification with DOL. 20 C.F.R. § 656.25. This is not a waiver of the job offer requirement, and does not support a finding that working in a Schedule A occupation inherently has national importance in the context of a national interest waiver. Furthermore, as noted above, the controlling factor in determining national importance is not the importance of an occupation or industry, but the actual potential impact of the proposed endeavor itself. *Dhanasar*, 26 I&N Dec. at 889-90.

Similar concerns apply to the Petitioner's claims regarding the potential economic impact of his endeavor. An endeavor that has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area, may be considered to have national importance. *Id.* However, the Petitioner's claims are centered on the economic effects of professional soccer and physical therapy as industries and his employer as a whole, rather than the specific impacts of his proposed endeavor itself. The Petitioner's practice of physical therapy will directly benefit only a small number of individual patients. This does not establish that the Petitioner's individual work as a physical therapist for a major league soccer team would have an economic impact rising to the level of national importance. *Id.*

We acknowledge that the Petitioner has a history of working for elite soccer teams and athletes, as well as the recommendation letters from his clients and colleagues, which speak highly of his abilities. However, the Petitioner's experience and credentials speak to the second prong of the *Dhanasar* test, which concerns the Petitioner's ability to advance the proposed endeavor. They do not establish that this endeavor, in and of itself, has significant potential to contribute to the advancement of the field of physical therapy or to otherwise enhance societal welfare. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). The Petitioner has not demonstrated that his proposed endeavor has national importance.

Because the Petitioner has not established his eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the other two prongs and we hereby reserve them. *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). The petition will remain denied.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.