



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

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

In Re: 26961731

Date: JUL. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an athletic trainer, 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 immigrant 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. 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.

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 (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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director concluded that the Petitioner had not sufficiently established the substantial merit and the national importance of his proposed endeavor as required by *Dhanasar*'s first prong.²

The Director identified the Petitioner's endeavor as an athletic trainer who will "assist occupational therapists in providing, instruct or coach in exercise activities for the purpose of personal fitness" according to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, "Basic Information About the Proposed Employment." The Director determined that the Petitioner did not submit a detailed description of the proposed endeavor and documentary evidence to demonstrate substantial merit.

However, the June 2, 2021 document entitled [REDACTED] contains a more detailed description of the Petitioner's proposed endeavor. This document clarifies that the Petitioner is "a specialist in athletic training and physical rehabilitation who is in the process of launching a company focused on physical rehabilitation services" and "will utilize his experience in physical rehabilitation and exercise to found an institute that will provide rehabilitation services." The Petitioner further points to web-based articles that demonstrate physical rehabilitation exercises and their benefits to the U.S. population who suffer from post-surgical outcomes and other physical ailments, especially during the times of COVID-19 pandemic.

In response to the Director's request for evidence (RFE), the Petitioner listed specific activities related to physical rehabilitation services including "offering specific and differentiated treatments for people with chronic pathologies, allowing their complete recovery," "help[ing] patients rehabilitate after surgery, speeding recovery, and improving post-surgical patients' outcomes," "treat[ing] patients as a whole through myofascial release, release techniques, muscle activation, restoring muscle functioning with specific exercises and allowing patients to restore their quality of life." The Petitioner reiterated that he "will establish a physical rehabilitation institute that will provide services to patients that suffer from chronic pain or injuries in the back, knees, and neck, or need treatment to recover from surgeries such as those of the joints or cardiovascular system."

Upon de novo review of the record, we find that the Petitioner has identified a specific proposed endeavor and met the substantial merit element under the first prong of *Dhanasar*. Therefore, we withdraw this portion of the Director's decision.

² In denying the petition, the Director determined that the record did not satisfy any of the three prongs set forth in the *Dhanasar* analytical framework.

The record does not, however, establish that the Petitioner's endeavor meets the national importance element under the first prong of *Dhanasar*. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not offered sufficient evidence linking his physical rehabilitation services to having a broader reach extending beyond his clientele to merit national importance.

The Petitioner repeatedly references his experience and knowledge and points to recommendation letters attesting to his background and qualifications. He contends that his past contributions and achievements "allow an accurate estimate of the prospective impact of his work." However, the Petitioner's professional qualifications relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*'s first prong.

The record contains support letters from the Petitioner's former co-workers at [REDACTED] [REDACTED] Although these letters praise the Petitioner's abilities in treating and connecting with patients and his expertise in physical education and rehabilitation, they do not discuss the specific nature of his proposed future endeavor. Instead, the authors make generalized statements such as "his expertise would undoubtedly be an asset to schools, universities, clinics, businesses and companies in the United States" and "his experience will collaborate to significant improvements to America's welfare" without providing evidentiary support for their conclusions.

Moreover, these letters address tangential and unrelated topics such as children's obesity as an important health problem in America and the Petitioner's bilingual experience as "an additional benefit to American companies that operate with employees from different national backgrounds." One letter considers employment status of high school teachers leading to a shortage of physical education teachers at high school level in the United States despite that the Petitioner's proposed endeavor does not involve teaching physical education at U.S. schools. In sum, these support letters do not demonstrate a clear understanding of the Petitioner's proposed endeavor and lack sufficient information and evidence to show the prospective impact of his proposed endeavor rising to the level of national importance.

In *Dhanasar*, we 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 889. On appeal, the Petitioner makes several references to his "proprietary" methodologies that he has implemented for treating chronic pain, but the Petitioner does not submit independent and corroborating evidence regarding these methodologies and their broad impact on the field of physical rehabilitation.

The expert opinion letter from [REDACTED] associate professor of health and sport sciences at [REDACTED] University, briefly mentions that the Petitioner is "well known as the expert who developed the [REDACTED] which helped treat chronic pain and reduce recovery time for his patients." Still, the opinion does not elaborate on the [REDACTED] or its usage in the field. Instead, it makes generalized conclusions about the proposed endeavor's potential to "improve

public health and quality of life, support jobs and tax revenue, strengthen U.S. companies, contributing to their growth and profits, disseminate years of specialized knowledge to the U.S. workforce, and help fill the shortage of wellness professionals.”

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* The submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion letter is of little probative value as it overstates the evidence in the record and does not meaningfully address the details of the proposed endeavor as to why it would have national importance.

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.” *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner claims that by opening a new business in physical rehabilitation with his expertise will lead to job creation and a significant increase in the quality of services provided in his field of endeavor. However, the Petitioner has not demonstrated how his proposed company will be on such a scale as to impact the national economy directly or indirectly. For instance, he has not offered evidence in the form of projected staffing levels or hiring plans to demonstrate that his proposed company would employ a significant population of workers in an economically depressed area or that his endeavor would offer a U.S. region or its population a substantial economic benefit through employment levels or business activity. The Petitioner has not explained or provided evidence to support how his endeavor will revise and improve the quality of services in physical rehabilitation so substantial as to affect the nation as a whole, not just his own clients. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner highlights a research paper which projects a significant growth in the sports training market and occupational and physical therapy services, as well as a steep demand for such services compared to the talent shortage of athletic trainers. The Petitioner also points out the President Biden’s executive order for continued promotion of the national youth sports strategy which makes mental health, physical fitness, and nutrition important issues for the country. Yet 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. Here, the Petitioner has shown only the national importance of the physical therapy or sports training field in which he intends to work and does not offer sufficient evidence to establish the national importance of his specific endeavor in providing physical rehabilitation services through his company.

For these reasons, we conclude that the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework and thus, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, further

analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

III. CONCLUSION

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

ORDER: The appeal is dismissed.