



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

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

In Re: 26953566

Date: JUL. 21, 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. *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 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,¹ grant a national interest waiver if the petitioner shows:

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).

- 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.

Initially, the Petitioner claimed that she intended to continue working in the United States as a physical therapist, noting that her expertise is in manual therapy, construction of functional kinetic disorders, recovery with orthopedic disorders, and homecare in the areas of orthopedics, geriatrics, and neurology. She submitted a professional plan describing her proposed endeavor as follows:

I intend to continue my activities as a Physical Therapist, utilizing all of the knowledge I acquired in programs and courses, along with my professional experience, which have considerably contributed toward the successful development of my work in an efficient manner, guaranteeing the best results. I also intend in improving my performance by taking new courses according to the demand in the field, which is constantly evolving, as well as taking the courses necessary to validate my credentials in the U.S.

...

In the United States of America, I will introduce my innovative methodologies to improve the lives of the American people. I also intend on using the same methodology to help patients change their sedentary lifestyle and live healthier. I will also apply my knowledge in homecare, orthopedics, geriatrics and neurology to make the transition smoother and provide the needed treatment to patients. Through my course certificates and vast experience, I am well qualified to introduce the best treatment necessary and train other U.S. professionals in the field.

...

Additionally, I will help American patients return to their professional workplaces and perform their daily duties as quickly as possible, thereby directly collaborating toward the presence of more economically and professionally active citizens and less retirees due to disabilities. By creating individualized patient care plans and applying the

appropriate techniques, I am certain that I will effectively restore the health and well-being of U.S. citizens more efficiently.

She concluded by stating that she ultimately intends to open a Physical Therapy and Pilates clinic to assist American patients who prefer to receive care outside their home environment.

Regarding the potential impact of her endeavor, she claimed that her proposed endeavor will positively impact the United States by:

- Improving the lives of the American people
- Helping American patients change their sedentary lifestyles and live healthier
- Training other U.S. professionals in the field
- Improving respiratory, mobility and pain relief
- Preventing or limiting permanent physical disabilities in patients with injury or disease
- Restoring, maintaining, and promoting overall fitness and health
- Contributing toward rehabilitation
- Addressing preventative initiatives
- Directly collaborating toward the presence of more economically and professionally active citizens and less retirees due to disabilities

The Petitioner also supported the record with an opinion letter, industry articles and reports, and letters of support.

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 proposed endeavor was to provide "generalized services to a company or companies benefits those companies and their clients," and that such an endeavor was insufficient to demonstrate that it would have broader implications in terms of significant potential to employ U.S. workers or have other substantial positive economic effects. 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 submitted a new professional plan which restated many of the goals stated earlier. Specifically, she stated her intent to "offer [her] extensive experience in trauma orthopedic, gerontological, aquatic, and pediatric motor physiotherapy to benefit American citizens by preventing injuries and pain, promoting rehabilitation, and preserving patient functionalities, enabling people to enjoy a good quality of life." Although she initially stated her intent to open her own clinic, her new professional plan makes no further reference to this claim.

The Petitioner also submitted a new opinion letter as well as 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 to affect her field or the United States more broadly. The Director further concluded that the record does 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 she will utilize her professional and presentation skills to disseminate knowledge. She further states that her proposed endeavor to work as a physical therapist will “broadly enhance societal welfare or social enrichment.” Finally, she discusses and provides statistics regarding the opioid crisis in the United States, and claims that her proposed endeavor will provide alternatives to opioids as pain management.

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.

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.”² *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 a healthcare facility, the proposed endeavor, would extend beyond her patients and employers in a manner that could be considered of national importance.

While the physical therapy profession may have national importance, the Petitioner has not demonstrated that her specific proposal could lead to advances in the field. She provided a letter from a Brazilian patient, who states that she suffers from chronic low back pain and was referred to the Petitioner for treatment. The patient stated that after numerous unsuccessful medical appointments with other providers, the Petitioner’s use of new procedures, including Electrotherapy and Thermotherapy, to treat her constant pain “made a remarkable contribution to her health and quality of life.” The Petitioner, however, has not specifically identified such “new procedures” or indicated that she would introduce these procedures to the United States. The record therefore does not

² 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.

demonstrate that her proposed U.S. endeavor has significant potential to advance the physical therapy field.

The record contains expert opinion letters from a professor of anatomy at the [] Institute and a professor of health and sport sciences at [] University, both of whom conclude that the Petitioner's proposed work has national importance. But the professors do not base their conclusions on the national importance of the Petitioner's specific endeavor. Although they recite the Petitioner's career history and accomplishments, their findings stem from the significance of the physical therapy profession - particularly in relation to the rapidly aging U.S. population. The letters therefore do 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 physical therapists, as well as a letter from a Brazilian physician, who commonly referred patients to the Petitioner for treatment. All of the writers commend the Petitioner's skills and abilities. Her physical therapist 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 physician's letter describes the Petitioner's treatment of a particular patient as successful, thus prompting numerous future referrals, but does not elaborate on how the treatment of this patient affected or influenced other physical therapists, or otherwise elevated the Petitioner above her peers.

The Petitioner's proposal to fill a vacant physical therapist position at an existing healthcare facility appears to benefit the Petitioner's potential employer(s) and the clients or patients 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. Moreover, the record does not establish how the proposed endeavor of educating other workers at the healthcare facility that may employ the Petitioner may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects. *See id.* 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 establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and 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.