U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37192155

Date: APR. 07, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an exercise physiologist and entrepreneur, seeks employment-based second preference (EB-2) 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 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 the EB-2 classification as a member of the professions holding an advanced degree, but that 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. 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.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the petitioner's proposed endeavor has both substantial merit and national importance; (2) the petitioner is well positioned to advance the proposed endeavor; and (3) that on

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the petitioner 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.

The second prong shifts the focus from the proposed endeavor to the petitioner. To determine whether the petitioner is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the petitioner's qualification or the proposed endeavor, it would be impractical either for the petitioner to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the petitioner's contributions; and whether the national interest in the petitioner's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner seeks to operate a wellness clinic called [redacted], where she plans to promote the role of exercise physiology within the U.S. healthcare system. The Director found that the Petitioner qualifies for the underlying EB-2 classification. The remaining issue to be determined 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.

In denying the petition, the Director acknowledged that the Petitioner's proposed endeavor has substantial merit and that she is well positioned to advance it. The Director determined, however, that the Petitioner did not establish the proposed endeavor's national importance, and that, on balance, it would benefit the United States to waive the job offer requirement. The Director also noted that the Petitioner introduced a new proposed endeavor in response to the request for evidence (RFE) rather than establishing the substantial merit and national importance of the proposed endeavor described in the initial petition. On appeal, the Petitioner contends that she has not changed her original endeavor but has instead provided specific examples of actions she plans to take in direct response to the Director's RFE. She further argues that the Director's decision "misinterpreted the scope" and "failed to consider the broader scope" of her proposed endeavor. She also states that the decision "did not fully recognize the national importance" of her proposed endeavor. We agree, in part, with the Petitioner that we do not believe she introduced a new proposed endeavor as the Petitioner explained in her petition "I understand the ins and outs of running a

private practice and the challenges of starting a business from scratch. I will use my experience to achieve results in my new venture." However, we conclude that the Petitioner has not sufficiently demonstrated the proposed endeavor's national importance. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The Petitioner states that her proposed endeavor seeks to establish exercise physiology as a fundamental component in the treatment and management of chronic and complex health conditions within the U.S. healthcare system. She aims to collaborate with insurance companies to facilitate the integration of exercise physiology into healthcare practices. The Petitioner argues that her evidence "clearly demonstrates" the proposed endeavor's national importance. The record includes various supporting materials, such as academic documents, a business plan, letters, and photographs of her patients.

The Petitioner asserts that her endeavor's potential to improve health outcomes and lower healthcare costs nationwide demonstrates its national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. The relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "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.* 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.* at 890. Here, the Petitioner claims that her endeavor as an exercise physiologist directly addresses the national healthcare crisis related to chronic diseases such as obesity, diabetes, and cardiovascular conditions. Although the field in which the Petitioner seeks to operate is important, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of her specific proposed endeavor rises to the level of national importance.

The Petitioner claims her proposed endeavor has the potential to generate new jobs, both within her organization and across the broader healthcare sector. She states her clinic will create new employment opportunities for U.S. workers, including hiring massage therapists, exercise physiologists, administrators, nurses, and support staff. While the Petitioner claims that her contributions can help reduce the healthcare burden in the United States by promoting exercise physiology as a fundamental component of preventive healthcare, the Petitioner has not established that that her specific endeavor stands to sufficiently extend beyond her patients and employees to benefit the regional or national economy that would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 889.

The Petitioner lists her professional experience and claims that her "expertise and unique contributions in the field of exercise physiology are not easily replicated by other professionals." She further contends that her work has the "potential to introduce new healthcare models that emphasize physical activity as a cornerstone of chronic disease management, thus benefiting the entire healthcare system." The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that her specific endeavor has national importance under *Dhanasar's* first prong. Moreover, although an individual's experience, qualifications, contributions, and achievements are material, they are misplaced in the context of the first *Dhanasar* prong. The Petitioner's professional experiences are

generally material to *Dhanasar*'s second prong—whether an individual is well positioned to advance a proposed endeavor—but they are generally immaterial to the first *Dhanasar* prong—whether a specific, prospective, proposed endeavor has both substantial merit and national importance. *See id.* at 888-91.

The Petitioner references various industry reports and articles to highlight the importance of exercise physiology in combating chronic disease. She explains that by "working towards policy changes and collaborating with insurance companies, healthcare providers, and professional organizations," she will strengthen systems that promote physical activity. Although we, like the Director, acknowledge the merit of integrating exercise physiology into the healthcare system, the record does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner's patients to impact the field of exercise physiology. Moreover, 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." *Id.* at 889. 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. *Id.* at 893. Here, the Petitioner has not sufficiently explained how her specific endeavor will positively impact the U.S. economy or generate direct and indirect jobs on a broad scale rising to the level of national importance.

The Petitioner argues that her work focuses on combating chronic diseases, improving public health, and creating jobs, all of which align with national health priorities and U.S. public health goals. Although the Petitioner claims that her endeavor aligns with government initiatives, she has not shown that her contributions are distinctive compared to others in the same field. Moreover, alignment with government initiatives alone is not sufficient for national importance. Here, the record lacks adequate corroborating evidence that the economic effects of the Petitioner's proposed endeavor working as an exercise physiologists through her clinic would substantially impact the regional or national economy. 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 her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to her future work, the record does not show 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*. *See Dhanasar*, 26 I&N Dec. at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. *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 she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.