U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34456958

Date: JAN. 6, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist specialist, 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 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 the record did not establish 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 pursuant to 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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Our precedent decision in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (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 discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

Id.

As an initial matter, we must withdraw the Director's determination that the Petitioner is an advanced degree professional. The Director concluded the Petitioner meets this requirement because she holds the foreign equivalent of a U.S. bachelor's degree in physical therapy and has at least five years of progressive post-baccalaureate experience in the specialty. However, according to the "How to Become a Physical Therapist" section of the *Occupational Outlook Handbook* entry for physical therapists submitted by the Petitioner, "[p]hysical therapists entering the occupation need a Doctor of Physical Therapy (DPT) degree. All states require physical therapists to be licensed." As noted above, the definition of an advanced degree at 8 C.F.R. § 204.5(k)(2) clearly states, in pertinent part, that "[i]f a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." In other words, the regulation does not allow for a combination of education and experience if "a doctoral degree is customarily required by the specialty."

The Petitioner's "Evaluation of Grades and Degree for Continuing Studies in the United States" reflects that she holds the equivalent of a bachelor's degree and a graduate certificate. Notably, although the evaluator states that the Petitioner was awarded the equivalent of a U.S. bachelor's degree in physical therapy, neither the diploma, nor the accompanying translation, use the term "bachelor's degree." Rather, her diploma states she was conferred the "title of Licentiate in Physical Therapy." Further, the evaluator does not address the DPT requirement for physical therapists, nor sufficiently explain their experience evaluating the credentials of individuals in the healthcare field.

As the Petitioner has not demonstrated that she holds the foreign equivalent of a DPT, she has not established that she is a member of the professions holding an advanced degree consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2). Accordingly, we will withdraw the Director's determination on this issue.

Regarding the Petitioner's assertions related to her proposed endeavor's national importance, we adopt and affirm the Director's decision on this issue. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Director denied the petition, finding the Petitioner materially changed her proposed endeavor. While the Petitioner first proposed to work as a physical therapist specialist in her initial filing, in response to the Director's request for evidence (RFE), the Petitioner submitted a new statement and business plan claiming she now intended to start her own company specializing in comprehensive home care services. The Director found this new information constituted an impermissible material change of the Petitioner's proposed endeavor. In other words, the Director essentially determined that since the gulf between the endeavor proposed at the time of filing and the one described in the RFE

response was so wide, the record contained two separate and independent proposed endeavors. And since the Director can conduct a *Dhanasar* analysis on only one endeavor per petition, they analyzed the first one. The Director determined that the evidence did not sufficiently show the Petitioner's future work as a physical therapist specialist would have national or global implications, would impact a matter that a government entity described as having national importance or is the subject of national initiatives, or would have other substantial positive economic effects as claimed. Therefore, the Director concluded the Petitioner did not establish the national importance of the endeavor she initially proposed.

On appeal, the Petitioner has elected not to address the Director's grounds for denial and, instead, bases her arguments on her new endeavor, which the Director did not analyze.[2] In doing so, the Petitioner fails to meaningfully argue how the Director erred in analyzing the *initial* endeavor and its evidence and, therefore, has not overcome it.

We agree with the Director's analysis and conclusions regarding the national importance of the proposed endeavor. Because the Petitioner must establish eligibility at the time of filing, her claims related to her new home care services company started after the filing of the petition cannot be considered. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). And for the reasons stated in the Director's decision, we agree that the Petitioner has not sufficiently shown that her initial endeavor of working as a physical therapist specialist is nationally important.

Because the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

[2] The Petitioner's brief also references her experience in nursing, the "immediate benefits" that the Petitioner can generate to the fashion industry, and "the vital support that her activities produce to the U.S. law business." The record does not support these statements.