U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31381592

Date: July 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 Petitioner did not establish eligibility for a 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 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.

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. While neither the statute nor the pertinent regulations define the term "national interest," 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

A. EB-2 Classification

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework.

B. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the above-mentioned range of areas of substantial merit, namely health. Therefore, we will first identify the Petitioner's endeavor as shown in the record and then evaluate the Petitioner's evidence in support of the endeavor's national importance.

The Petitioner asserts that her proposed endeavor is "to establish a company that will provide clinical physiotherapy and post-surgical rehabilitation services and support for various injury recovering patients, complemented by the provision of functional training sessions and physical therapy plans tailored to meet the individual needs of patients." She notes that strokes are the third leading cause of death among Americans and 67 percent of stroke victims require rehabilitation. She contends that her "presence in the United States, providing motor rehabilitation treatment and support, can definitely improve the quality of life of these specific individuals." In addition, she argues that "the promotion of physical well-being through physiotherapy interventions can lead to a more productive and healthier workforce, fostering economic growth by enhancing overall labor force participation," and "the societal impact of an endeavor like [hers] extends beyond individual health outcomes, positively influencing societal well-being and economic prosperity." She maintains that her endeavor "is inherently designed to significantly bolster societal welfare within the United States by virtue of its intrinsic nature," highlighting that she will establish "a clinic that will operate to generate remarkable health benefits for U.S. citizens through the execution of top-quality physical therapy treatments, all in order to improve physical strength, cognition, mobility, and quality of life of American people of

all ages, but especially vulnerable demographics such as elderly and impaired patients." She states that her business plan focuses on four main areas, based on her previous experience, knowledge, and expertise: motor rehabilitation services for stroke and elderly patients; functional training for rehabilitation; respiratory and motor physical therapy for post-ICU recovery; and cardiorespiratory physical therapy. In her business plan, the Petitioner asserts that she will "hire a wide range of American professionals to assist in the endeavor's goals . . . a total of 10 employees by its fifth year," and she bases her projections upon "the astounding growth projection in demand for physiotherapists." She further asserts that she "is not just a regular physical therapist . . . but a highly competent professional excelling not in only in practical applications but also in theoretical knowledge, and therefore, "her company's activities will foster collaboration and knowledge transfer among American healthcare professional, researchers, and health organizations in the physiotherapy field." She also posits that her endeavor "aimed at improving the nation's physiotherapy field and healthcare industry through the development for new physical therapy treatments and the provision of specialized physical therapy services, especially cardiopulmonary and respiratory therapy, must be classified as an important national matter, as her work contributes to advancing STEM[2] fields and occupations," a field which USCIS has emphasized the importance of as it relates to U.S. competitiveness and national security.

On appeal, the Petitioner contends that the Director's decision omitted "two of the crucial aspects that must be taken into account when assessing the national importance of a proposal: its ability to broadly enhance societal welfare, and its impacts on a matter that a government entity has described as having national importance and is also the subject of national initiatives." In addition, in response to the Director's determination that the record lacks documentation of any preparations or progress towards achieving her endeavor, the Petitioner contends that she "has articulated a prospective enterprise intricately linked to her proficiency and achievements in the field of physiotherapy in Brazil. Furthermore, she has attracted the attention of potential investors . . . further advancements in the establishment of her proposed endeavor clearly depends on the approval of her immigration petition."

Here, the Petitioner relies primarily on the importance of physical therapy as a valuable profession[3] as well as the importance of physiotherapy interventions in certain medical conditions. However, this misapplies the Dhanasar framework. 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." Dhanasar, 26 I&N Dec. at 889. 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. A local physical therapy business and a shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the Dhanasar framework.

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[2] STEM is a common abbreviation for four closely connected areas of study: science, technology, engineering and mathematics.

[3] The Petitioner highlights that the "physical therapy occupation is listed as a Schedule A Occupation - Group I by the United States Citizenship and Immigration Services, thereby warranting above average importance in regards to adjudication and immigration consideration, given the benefits and critical importance that the availability of such professionals currently has before the United States government."

The Petitioner's business plan provides a generalized description of the company's marketing and growth strategy and projected sales; however, there is no explanation of the origins of the estimates or of how they were calculated and broad statements and projections regarding the potential growth of the Petitioner's business and substantial positive economic effects that her business will produce, based upon the "the current unavailability of physiotherapists" and "the current growing demand for physiotherapists within the United States," do not demonstrate the prospective impact directly attributable to her proposed endeavor or establish how her endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id. at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided evidence to establish that the area in which the company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue.

Moreover, while the Petitioner's asserts that she intends to foster collaboration and knowledge transfer among American healthcare professional, researchers, and health organization in the physiotherapy field, she has not provided sufficient information and evidence to demonstrate the positive impact she may have in the field of physiotherapy. Likewise, while she maintains that her endeavor aligns with federal health initiatives, particularly that of advancing STEM fields and occupations, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would advances STEM fields or occupations or impact the field of STEM more broadly. Generalized conclusory statements that do not identify a specific impact to the field have little probative value,[4] and here, the Petitioner has not shown with sufficient evidence how her work with her prospective local clients will impact the industry beyond the operations of her business. In addition, while we acknowledge the submitted expert opinions; the issue here is whether the Petitioner has demonstrated the national importance of her proposed endeavor, and expert opinions are relied upon in determining whether an individual is well positioned to advance the proposed endeavor and not in demonstrating the national importance of the proposed endeavor.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under Dhanasar's second and third prongs. See INS v Bagamasbad, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); 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).

ORDER: The appeal is dismissed.

[4] *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).