U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31639374

Date: JULY 11, 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 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 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 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.

I. LAW

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Petitioner submitted evidence that she holds the equivalent of a United States baccalaureate degree and over five years of progressive experience in physical therapy. She thus qualifies for EB-2 classification as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) (stating a foreign equivalent of a United States baccalaureate degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree). The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

In her professional plan, the Petitioner states she will continue to work as a physical therapist in the United States in hospitals and home care. The Petitioner states she will specialize in Thermography and work in the areas of neurology, orthopedics, athlete rehabilitation, gerontology, and lecturing.

A. 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. *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. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would have broader implications in her field.

On appeal, the Petitioner asserts "her contributions extend beyond routine physical therapy, encompassing specialized techniques such as Dry Needling, Thermography, and participation in the study group of the McKenzie Method in Brazil." The Petitioner submitted letters from three colleagues praising her work with these techniques. The record does not indicate, however, that she created or significantly innovated any of these techniques or has made other contributions with national or even global implications in the field of physical therapy. *See id.* at 889 (citing improved manufacturing processes or medical advances as examples of national or global implications within a particular field).

The Petitioner also claims her proposed endeavor has national importance because it "aligns with the current trend of return-to-work programs in American companies" and "the broader goal of fostering

a healthier workforce and reducing the economic burden associated with chronic illnesses and injuries." The Petitioner asserts her work addresses public health issues such as the opioid epidemic, pain associated with pregnancy, pediatric health, chronic pain, and the rehabilitation of COVID-19 patients. The Petitioner claims her proposed endeavor aligns with the Primary Health Services Enhancement Act, a Congressional bill introduced in September 2021 which aims to enhance access to physical therapy services. We acknowledge the role physical therapy may play in addressing these public health issues. However, our assessment of national importance does not center on issues affecting a field or occupation in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* Here, the Petitioner does not submit evidence of how her work would impact public health beyond her treatment of individual patients on a level commensurate with national importance. *Cf. id.* at 892 (citing media articles and other evidence documenting Congressional interest in Dhanasar's research).

The Petitioner submitted a letter from J-A-[2], a contributing faculty member at the [redacted] expressing his opinion that the Petitioner qualifies for a national interest waiver. J-A- states the Petitioner's work has national importance because "[p]hysical therapy plays an important role in improving quality of life." J-A- further states the Petitioner's proposed endeavor will "broadly enhance societal welfare or cultural enrichment" because "[p]hysical therapists play vital roles in today's health care environment" and physical therapy allows seniors to continue living life to the fullest extent. While J-A- discusses the importance of the physical therapy profession, he does not specify how the Petitioner's work with individual patients would have a broader impact in her field. Again, our assessment of national importance does not focus on the importance of a field or occupation in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889.

The Petitioner asserts her proposed endeavor will have a significant economic impact because she will enhance the quality of services offered in physical therapy, a 34-billion-dollar industry. J-A- also claims the Petitioner's proposed endeavor has significant potential to employ United States workers and has other substantial positive economic effects because the physical therapy industry was valued at 33.0 billion dollars in 2021. However, the Petitioner states she will work in home care or at hospitals and does not indicate that she would employ any other individuals. J-A- also did not discuss, and the Petitioner did not submit evidence of, any financial plan or forecast of the Petitioner's proposed endeavor indicating that her work would have other substantial economic effects on a level of national importance as contemplated in *Dhanasar*. *See id.* at 890 (discussing substantial economic effects).

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 established that her proposed endeavor would sufficiently extend beyond her individual patients to impact the physical therapy field more broadly at a level commensurate with national importance.

Although the relevant evidence establishes the substantial merit of the Petitioner's proposed endeavor, it does not demonstrate the Petitioner's proposed endeavor would have significant potential to employ

[2] We use initials to protect the privacy of the individual referenced.

U.S. workers, other substantial positive economic effects, national or even global implications within the field, or other broader implications indicating national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of her specific proposed endeavor and she does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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

The Petitioner has not established the national importance of her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.