U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31260851

Date: JUNE 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physiotherapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. 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. The Director concluded that the Petitioner did not establish she merits a discretionary waiver of the job offer requirement 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as a

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

Id.

II. ANALYSIS

The Petitioner proposes to continue working in the physical therapy field by establishing a health and wellness clinic business in the United States.

The Director's decision did not indicate whether the Petitioner established her eligibility for the underlying EB-2 immigrant classification. Upon de novo review, the Petitioner has established she is eligible for the underlying classification as an advanced degree professional.[2]

The issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of the classification's job offer requirement. The Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish that she is well positioned to undertake the endeavor under *Dhanasar's* second prong, or 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 under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[3]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a 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 national importance, the relevant question is not the importance of the field, 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.

The Petitioner proposes to establish a health and wellness clinic business for which she would be its chief physiotherapy officer and clinic manager. As explained in the business plan, the Petitioner and other individuals plan to establish the business' main office in a historically underutilized business community in [redacted] Florida, with plans to expand to underutilized business communities

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

[2] To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma, her academic transcript, an academic evaluation, and letters of employment. The record demonstrates that she holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in her specialty. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

in [redacted] by its fifth year. The business would focus on preventative care and community wellness by offering a range of treatments to maximize recovery and enhance physical wellness. The business plan explains that the business would benefit patient health, reduce healthcare costs, increase productivity of the working population, enhance quality of life for the elderly population, mitigate the shortage of physical therapists, create jobs, and contribute to the disposable income of workers. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor has the potential to extend beyond her business and its clients to impact the field more broadly. The Director further found that the Petitioner did not demonstrate her endeavor has significant potential to employ U.S. workers or offer substantial positive economic effects. Therefore, the Director determined that the Petitioner did not demonstrate that her endeavor is of national importance and did not meet the first prong of the Dhanasar framework. Upon de novo review, the Petitioner has not established that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the Director "did not apply the proper standard of proof . . ., instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The Petitioner further argues that the Director "did not give due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; the business plan describing her credentials and the projected benefits she may offer the United States; letters of recommendation; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in her field.

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, upon de novo review of the record, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

The Petitioner stresses on appeal her professional experience to argue that "[h]er innovative methodologies and treatment protocols have the potential to substantially influence physiotherapy standards nationwide." She points to letters of recommendation arguing such testimonials of her past work show the national scope and importance of her proposed endeavor. She argues that her "long-term vision includes developing new treatment methodologies and collaborative research, which could significantly impact physiotherapy practices in the [United States]." However, the Petitioner does not explain or provide evidence showing how she intends to develop and research new treatment methodologies or how her endeavor would be different from work typically performed by physical therapists.

Instead, the Petitioner relies on letters of recommendation from her colleagues to show her past work in the physical therapy field has benefited her previous clients and the industry. The recommendation

letters attest to the Petitioner's technical knowledge by describing her successful treatment results for individual clients and her commitment to updating her professional skills. We acknowledge that the Petitioner provided valuable physiotherapeutic services for her previous employers and her clients, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate her claims of providing new innovative treatment methodologies or research that would impact the field. While the Petitioner's previous employers and colleagues generally attest to the Petitioner's dedication to her clients and to improving their health, the content of these letters relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The second prong of the Dhanasar framework "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. 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 the field more broadly. Id. at 893. Similarly, the record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of physical therapy, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that the Petitioner's health and wellness clinic business would impact the physical therapy field more broadly.

The Petitioner further contends her proposed endeavor has national importance based on her business mitigating the shortage of physical therapists in the United States and its potential economic and health benefits. The Petitioner's statement explains that individuals in the United States have been managing pain with opioids, which mask pain instead of treating its cause. By establishing a business focused on physical therapy for pain management and treatment, the Petitioner states that her work would have broader implications in her field by helping to mitigate the shortage of healthcare professionals and supporting alternate therapies to opioids to manage pain. She asserts that reports and articles show the importance of physical therapists and the growing demand and shortage of qualified physical therapists.

While we recognize that a shortage of physical therapists demonstrates substantial merit of a proposed endeavor, it does not render a proposed endeavor nationally important under *Dhanasar's* framework, as it does not in itself establish the proposed endeavor's impact in the field. The U.S. Department of Labor, through the labor certification process, directly addresses such shortages of qualified workers. The issue here is whether the Petitioner has established how her proposed endeavor would affect national physical therapy employment levels or the U.S. economy more broadly consistent with national importance. However, the record does not demonstrate how the Petitioner's proposed endeavor will address a shortage of qualified physical therapists.

The record includes industry reports and articles that relate to the importance of physical therapy, Medicare reimbursement caps may constrain the growth of the physical therapy industry, strategies to mitigate the physical therapy worker shortage, and the importance of immigrant entrepreneurs and

workers to the U.S. economy. We recognize the importance of the physical therapy field and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the physical therapy field or starting a health and wellness clinic business is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a specific industry, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. In Dhanasar, we 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. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner's proposed endeavor.

The Petitioner's statement and a business plan indicate her proposed endeavor has national importance based on potential economic and health benefits to underutilized business areas of Florida and to the United States. The Petitioner states her business' treatments would benefit the health of her clients and enhance the quality of life for the elderly population, which would make the underutilized business communities more attractive to retirees and lead to more spending in the communities. She also claims her business would reduce healthcare costs by focusing on preventative care and rehabilitation; increase productivity of the working population by aiding in their recovery from injuries and reducing pain; generate jobs for U.S. workers in these underutilized business communities; improve wages and disposable income for workers; help the local community attract foreign investments to the region; and generate U.S. and local taxes. The business plan also explains the Petitioner's experience and investment in the business; the business' intended location and expansion plans; its products and services; a market overview of the expected growth of the physical therapy industry; and the business' projected marketing strategy, staffing, and financial calculations.

However, the Petitioner has not sufficiently documented the potential prospective impact, including the asserted economic and health benefits to the United States and the areas it intends to serve. The growth and importance of an industry is not sufficient to meet the national importance requirement under the Dhanasar framework. The Petitioner has not provided corroborating independent and objective evidence to support her claims that her business' activities stand to provide substantial economic and health benefits to the underutilized Florida business communities or the United States. Statements and claims alone are not sufficient to demonstrate her endeavor has the potential to provide economic and health benefits to the underutilized business communities and the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as a co-owner, chief physiotherapy officer, and clinic manager of her health and wellness clinic business would impact the physical therapy field more broadly, rather than benefiting her business and her clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

For instance, the business plan projects that in five years the business will hire 43 employees, pay wages of over $5.4 million, and generate $490,000 in income taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these

projections will be realized. The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to the United States and the communities it will serve. While the Petitioner expresses her desire to contribute to the United States and its underutilized business areas, she has not established with specific, probative evidence that her endeavor has the potential to have broader implications in her field, significant potential to employ U.S. workers, or other substantial positive economic effects in an economically underutilized business areas of Florida or the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See id. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 43 jobs, paying wages of over $5.4 million, and generating $490,000 in income taxes over a five-year period rises to the level of national importance.

To further support the national importance of her endeavor, the Petitioner submitted an opinion from a professor for the nursing department at [redacted] The opinion states that the Petitioner's work is "in an area of substantial merit and national importance" and describes the importance of physical therapists to the U.S. healthcare industry, the convenience and necessity of providing in-home physical therapy services to the aging population, and the expected growth of the physical therapy industry. However, the opinion focuses on the need for physical therapists and how the Petitioner's experience makes her capable to provide physical therapy services in the United States, instead of the Petitioner's specific endeavor having a prospective impact in the field of physical therapy. The submission of letters from experts supporting a petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Stating that the Petitioner's work would support an important industry with a shortage of qualified professionals is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

Based on the above, the Petitioner has not demonstrated that her proposed endeavor has the potential to extend beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as co-owner, chief physiotherapy officer, and clinic manager of her proposed health and wellness clinic business offers the claimed innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and health benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed work and the claimed potential economic and health benefits.

III. CONCLUSION

Because the Petitioner does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver as a matter of discretion. The identified basis for denial is dispositive of the Petitioner's appeal, therefore we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments regarding the second and third prongs under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.