



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 15897947

Date: JULY 22, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physical therapist, seeks second preference immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further consideration and the entry of a new decision consistent with the following analysis.

**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. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
  - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). This, however, is only the first step, and the successful submission of evidence meeting at least three criteria does not, in and of itself, establish eligibility for this classification.<sup>1</sup> When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i).

While neither the statute nor the pertinent regulations define the term “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.<sup>2</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that

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<sup>1</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. USCIS Policy Memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, PM-602-0005.1 (Dec. 22, 2010).

<sup>2</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

the foreign national is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> 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.

At the time of filing, the Petitioner was in the process of validating her licensing and professional credentials. The Petitioner's proposed endeavor centers around her desire to work in a healthcare facility setting where she will treat patients suffering from functional problems, sports and work-related injuries, as well as "disorders related to cardiorespiratory function, lung infections, and arterial hypertension circulation; immobility, motor dysfunctions; postural asymmetries; poor ergonomic conditions; and many other conditions." In addition to providing patients with proper diagnosis and treatment, the Petitioner also seeks to "[e]ducate other physiotherapists on proper techniques and

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner received a Bachelor of Physiotherapy degree from [REDACTED] in January 2004 and demonstrated that she had at least five years of progressive full-time employment as a physical therapist when this petition was filed.

treatments” and “[m]onitor and manage other therapists, assistants, and others involved in the diagnosis and recovery process.”

#### A. Substantial Merit and National Importance of the Proposed Endeavor

In the denial, the Director determined that the Petitioner did not adequately explain her specific undertaking and therefore did not establish the existence of a proposed endeavor. On the basis of this determination, the Director concluded that the Petitioner did not meet the criteria of the first prong of the *Dhanasar* analytical framework. Although we disagree with the Director’s underlying reasoning and find that the Petitioner adequately identified a proposed endeavor, we agree that the Petitioner did not demonstrate that her proposed endeavor is of national importance.<sup>5</sup> Therefore, for the reasons discussed below, we conclude that the Petitioner did not meet the criteria of the first prong of the *Dhanasar* analytical framework.<sup>6</sup>

In the Petitioner’s “Professional Plan & Statement,” she provided a review of her professional history, which included a list of her prior employers and treatment methods she used to treat patients, including “the global postural reeducation (RPG) technique” and “Pilates with the mat and reformer methods,” which she claims to have used to create treatment programs for patients with orthopedic, neurological, and rheumatological ailments. The Petitioner also provided the following description of her skills in the field of physical therapy:

I can provide care to people of all ages who have functional problems resulting from back and neck injuries, sprains, strains, fractures, arthritis, amputations, musculoskeletal problems, neurological disorders, degenerative diseases, aging process, muscular weaknesses, impaired motor functions, [and] orthopedic dysfunctions. Additionally, I can help treat injuries related to work and sports; and disorders related to cardiorespiratory function, lung infections, and arterial hypertension circulation; immobility, motor dysfunctions; postural asymmetries; poor ergonomic conditions; and many other conditions.

The Petitioner claimed that her proposed endeavor will result in economic and social benefits because it will allow her to provide services that will improve the quality of patients’ lives, reduce hospitalization time, and allow patients to “participate in the community and economy.”

The Petitioner also provided employment letters – one from a prior colleague and three from individuals who hired and were responsible for overseeing the Beneficiary’s work. All four individuals verified the Petitioner’s level of professional skills and described patient cases in which the Petitioner improved the respective patients’ orthopedic conditions through physical therapy.

In a request for evidence (RFE), the Director instructed the Petitioner to provide evidence establishing her proposed endeavor has national importance. The Director provided a potential list of documents

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<sup>5</sup> The Petitioner provided an article discussing the growing demand for physical therapists as well as reports demonstrating a demand for physical therapists; physical therapy’s expanding role in healthcare; and its effectiveness in improving patient care and pain management and reducing healthcare costs associated with certain types of injuries. In sum, the submitted documentation supports the Petitioner’s claim that her proposed endeavor has substantial merit.

<sup>6</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

the Petitioner could submit to demonstrate eligibility under this prong, including reports or letters from government agencies or industry groups describing the proposed endeavor or illustrating the endeavor's national importance, articles from scientific or professional journals showing that the proposed endeavor has national or global implications within the field or that it is the subject of national initiatives, or evidence that the endeavor has potential to create substantial economic effects.

In response, the Petitioner submitted a "Professional Plan and Statement" describing her proposed endeavor to use her "expertise in physical therapy rehabilitation and management to contribute to U.S. population health" and "enhance health service operations in a number of businesses and clinics," thereby "promoting a positive impact on the U.S. economy." The Petitioner further stated that she intends to "accurately address nation-wide medical concerns," including medical costs, hospital readmissions, use of opioids, and excessive recovery times. Although the Petitioner claimed that there is a "dire shortage" of physical therapists in the United States, one of the articles she provided directly contradicts that assertion and instead forecasts that there would be "a 44% increase in the number of practicing Physical Therapists in the next 10 years" and that the number of new graduates "greatly overshadows the rate of retiring Physical Therapists" making the PT job market "a little more competitive each year." *Physical Therapist Jobs Outlook: A 10 Year Forecast of Massive Growth*, <https://ptprogress.com/physical-therapist-jobs-outlook> (last modified November 17, 2018). Furthermore, even if the Petitioner was able to establish a shortage of physical therapists in the United States, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone would not demonstrate that waiving the requirement of a labor certification would benefit the United States. Moreover, none of the documents submitted establish that the benefits of working as a physical therapist in a healthcare facility, the proposed endeavor, would extend beyond her patients and employers in a manner that could be considered of national importance.

Further, although the Petitioner claimed that she has expanded her physical therapy knowledge by taking a course on respiratory therapy treatment for COVID-19 patients, this information does not support the Petitioner's eligibility, which must be based on facts and circumstances that existed at the time the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). Because the petition was filed in 2019, any new skills the Petitioner may have acquired in 2020, including skills that may have resulted from the 2020 pandemic, will not be considered in determining whether the Petitioner's proposed endeavor had national merit at the time of filing. Likewise, the Petitioner's claim that she is now "in the process of validating" her professional credentials in the United States similarly lacks probative value, as the validation had not been completed at the time of filing.

The Petitioner also provided: articles discussing the role of physical therapy in transforming pain management, reducing hospital readmissions and chronic opioid use, and the effects of physical therapy intervention on older patients with low back pain; reports on the economic costs and negative impact of the opioid crisis in the United States; and a study on the connection between early physical therapy intervention and prolonged use of opioids to manage pain. Although these documents indicate that the Petitioner's proposed work as a physical therapist has substantial merit, in determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes

to undertake.”<sup>7</sup> See *Dhanasar*, 26 I&N Dec. at 889. As explained in *Dhanasar*, “we look for broader implications” of the proposed endeavor and whether “[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.

On appeal, the Petitioner states that she is “superiorly qualified” as a physical therapist and plans to use her knowledge and experience to “enhance the Physical Therapy community in the U.S. and to be a contributing member of American society.” The Petitioner states that in addition to the formal education she completed towards her degree in physical therapy, she also completed “intellectual courses” in the following: “Applied Physical Therapy in temporomandibular joint (TJM [*sic*]) disfunction,” “Physical Therapy in TJM [*sic*] and Orthognathic postoperative surgeries, Pilates, “Global Postural Re-education,” “I Meeting – Dry Needling,” “lumbar segmental stabilization,” and “[m]ost common hospital handling clinical comorbidities with COVID-19.” To the extent that the completion certificates for the three latter courses contain 2020 dates, these courses are not relevant for the purpose of establishing the Petitioner’s eligibility at the time of filing, which took place in 2019 and therefore predates the completion of the three courses and certifications received as a result of the completions. See 8 C.F.R. § 103.2(b)(1). Although the record contains certificates showing that the Petitioner also completed courses in TMJ, Pilates, and “Global Postural Re-education” prior to filing this petition, the additional knowledge, skills, and experience the Petitioner gained in her field as a result of these courses relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.<sup>8</sup> The issue here, however, is whether the specific endeavor that the Petitioner proposes to undertake has national importance under *Dhanasar*’s first prong.

The Petitioner further claims that using the skills she acquired through work experience and above-listed courses will enable her to improve the quality of patients’ lives “through the science” and to “help[] the economy to allocate less funds in the Medicare.” However, the Petitioner does not offer specific examples of such impact on “the economy,” nor does she provide evidence to demonstrate that her proposed endeavor has “broader implications” that will extend beyond the limited sampling of patients she intends to treat.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her work as a physical therapist stands to provide substantial economic benefits in Florida or the United States. Likewise, although the

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<sup>7</sup> The issue here is not the value of physical therapy as an effective means of treatment and pain management, but rather whether the Petitioner’s specific proposed endeavor as a physical therapist rises to the level of national importance.

<sup>8</sup> To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver solely by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

Petitioner anticipates that she will benefit future employers by offering effective patient diagnosis and treatment, she has not demonstrated that these benefits will extend to the regional or national economy or that they would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

To evaluate whether the Petitioner’s endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. As discussed above, the Petitioner’s evidence is insufficient to show that her proposed work has “broader implications” for her field or that its effects would extend beyond the specific patients she intends to treat at her prospective places of employment. In general, the value of qualified physical therapists to U.S. national healthcare initiatives is collective, and the Petitioner has not shown that her proposed work as a physical therapist stands to have wider implications in the field of physical therapy.

In sum, the Petitioner’s documentation is not sufficient to demonstrate that her proposed endeavor is of national importance under the *Dhanasar* framework. While we acknowledge the merits of her work, whose objective is to improve the quality of patients’ lives while reducing rehospitalization incidents and prolonged use of opioids, the record does not demonstrate that the Petitioner’s contribution will offer benefits that extend beyond her particular patients to impact the field of physical therapy more broadly.<sup>9</sup> Accordingly, 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. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established that he is eligible for or that he otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

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<sup>9</sup> Likewise, 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.