



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21441036

Date: APR. 14, 2023

Appeal of Nebraska 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 and/or an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for a national interest waiver under the Dhanasar analytical framework. 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be 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.

II. ANALYSIS

The Director did not analyze the Petitioner's eligibility for the underlying EB-2 classification. Upon review, we conclude the record establishes the Petitioner has the foreign equivalent of U.S. bachelor's degree and at least five years of post-baccalaureate experience in physical therapy. Therefore, the Petitioner qualifies for the EB-2 classification as an advanced degree professional. The remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to work as a physical therapist in the United States. Specifically, she will "provide physical therapy rehabilitation services, along with promoting and preserving the health and wellbeing of the residents in the Central Florida area." We conclude that this endeavor has substantial merit.

The Petitioner asserted her proposed endeavor is nationally important because "[p]hysical therapists offer less costly and less invasive, drug free, and holistic type treatments that are less expensive than surgery and will therefore reduce the burden on the Medicare system." Further, she stated that the proposed endeavor "will contribute to the health of the nation particularly for senior citizens who use proportionally more medical resources than any other age group." The Petitioner also noted "the urgent need" for physical therapists, the "increased demand" for them, and the "severe shortage of physical therapist[s, which] is acknowledge[d] by the US government by virtue of Schedule A."

The Petitioner emphasized the importance of physical therapy for addressing injuries, pain management, rehabilitation, and senior citizen falls. She noted various other factors, such as the aging work force, members of the workforce not able to work, and the cost of care. In addition, the Petitioner highlighted the economic importance of physical therapy by providing reports on the industry's potential to reduce opioid use and patients' need for more expensive interventions. She supported her statements with numerous articles on topics, such as how the need for caregiving increases with age, the physical therapy national shortage, the positive economic impacts of immigration, physical therapists' eligibility for the government's student loan repayment program, and the health impacts of physical therapy, among others. This demonstrates the field of physical therapy is important; however, this does not necessarily establish the national importance of the proposed endeavor. 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." See *id.* at 889. Much of the Petitioner's evidence relates to the importance of

the physical therapy profession or field, rather than the national importance of a specific proposed endeavor.

The Petitioner's client testimonial letters emphasize the results she achieved for specific patients and her ability to customize individual treatment plans for them. Her statements and letters of recommendation reference that she developed a "method of making insoles" and "rehabilitation protocols," has "unique talents," "innovative techniques," and "innovative methods and solutions," as well as that she "will bring a new methodology."² However, the Petitioner has not provided sufficient independent and objective evidence of these methods, solutions, talents, protocols, and techniques. Neither the Petitioner nor the authors of the letters offer a detailed explanation of what she developed, how her talent is unique, or what innovations she offers. The record does not evidence what aspects of her physical therapy care, if any, are unknown or unavailable in the United States. Accordingly, the record does not sufficiently support a finding that the Petitioner's endeavor stands to impact the field or the nation.

Although the Petitioner may customize treatment programs to meet individual patient needs, this does not appear to have an impact extending beyond her patients. The record does not suggest, for example, that the Petitioner's patient care duties would meet the current demand for physical therapy, address the national physical therapist shortage, or otherwise operate on a scale rising to the level of national importance. While we agree that the field of physical therapy is important, it is not apparent from the evidence or arguments provided that the Petitioner's specific proposed endeavor has national importance.

On appeal, the Petitioner relies primarily upon the evidence and arguments already provided. In support, she submits a helpful and well-organized chart that summarizes the evidence and categorizes it in relation to her claimed eligibility. The Petitioner states that she "will also have the capacity to educate others in the field, which will expand the benefit of her endeavor beyond her immediate reach." While we acknowledge this assertion, the Petitioner provides little evidence or explanation to support it. In *Dhanasar*, we determined 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. Likewise, even if she had provided additional evidence of her capacity to educate others as a part of her endeavor, we would likely conclude that such evidence is not sufficient to demonstrate the endeavor's broader impact. On appeal, the Petitioner includes an additional article on the cost savings that physical therapy offers in the treatment of lower back pain. This article further supports a finding of the importance of physical therapy; however, as explained, the importance of the field does not necessarily establish the national importance of the proposed endeavor.

The Petitioner has not sufficiently demonstrated how her proposed endeavor would impact the field of physical therapy or the nation. Therefore, we conclude she has not met the requisite first prong of the *Dhanasar* framework and has not demonstrated eligibility for a national interest waiver. Further

² Such evidence also praises the Petitioner's education, experience, and personal qualities. These factors relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner's specific endeavor has national importance under *Dhanasar's* first prong.

analysis of her eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning **eligibility** under 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**).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.