U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26953760

Date: MAY 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapy specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. See 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, concluding that the record did not establish that the Petitioner qualifies for the underlying visa classification or 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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 matter of discretion[2], 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.

II. ANALYSIS

The Petitioner proposes to work in the United States as a physical therapy specialist having worked in the healthcare field in Brazil. She holds a licentiate in physical therapy from [redacted] in Brazil and a post-graduation certificate in specialization in respiratory physical therapy and intensive care from Centro Universitario da [redacted] in Brazil.[3] The Director determined that the Petitioner did not qualify for the underlying EB-2 classification. Upon de novo review, we find that the Petitioner has demonstrated qualification for the underlying EB-2 visa classification as an advanced degree professional having a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2).

The Director further found that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest. The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance as set forth under the first prong of the Dhanasar analytical framework.

The first prong, 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." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner indicates in her professional plan and statement that she would work as a physical therapy specialist for patients at a health care facility by providing "expert advice and treatment to patients." She states her extensive experience "working with patients with a wide array of injuries and illnesses will be beneficial to the U.S. healthcare industry," which needs experienced physical therapists. In addition to patient care, the Petitioner also proposed "possibly working to teach new [p]hysical [t]herapists", which would allow "more highly skilled physical therapists to enter the healthcare field in the [United States]." We agree with the Director that the Petitioner's endeavor has substantial merit.

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[2] 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).

[3] The Petitioner submitted certificates and academic coursework records from each of the educational institutions.

In the appeal, the Petitioner introduces an additional endeavor, "continue working in [p]hysical [t]herapy with multi-national companies, providing indispensable guidance regarding national and cross-border contracts involving the development of different [h]ealthcare ventures in the U.S. and Brazil." The Petitioner asserts on appeal that her endeavor would help U.S. businesses develop cross-border projects, particularly in Latin America, thereby benefiting U.S. healthcare and businesses.

The Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. See Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also Dhanasar, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. at 175; see also Matter of Katigbak, 14 I&N Dec. at 49. Since it appears the new endeavor raised on appeal is a material change to the Petitioner's proposed endeavor, we will not consider it in this appeal. We will evaluate the evidence for the endeavor the Petitioner submitted with the petition and with her reply to the request for evidence.

To show the Petitioner's endeavor has national importance, her professional plan describes its economic and social benefits. The Petitioner emphasized the importance of physical therapy for addressing injuries and illnesses, pain management alternative to opioids and other prescription medications, rehabilitation, minimize use and reliance on assistive devices, treating the increasing elderly population, and alleviating healthcare costs. Further illustrating the nature of her eligibility for the national interest waiver based on her proposed endeavor, the Petitioner provided recommendation letters from patients and colleagues; previous employment experience letters; articles and industry reports relating to the field of physical therapy; and an expert opinion letter attesting to the Petitioner's eligibility for the waiver.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof, instead imposed a higher standard, and erred by not giving "due regard" to the evidence submitted. The Petitioner further argues that her proposed endeavor is of national importance because it will "generate substantial ripple effects upon key commercial and business activities on behalf of the United States – namely, serving the business development and business functions of U.S. companies." The Petitioner relies on her previous work assisting hospitals, clinics, and medical facilities to demonstrate the proposed prospective impact to help improve U.S. healthcare. The Petitioner references her previously submitted evidence and emphasizes the increase in demand for physical therapists due to the aging population and the popularity of physical therapy devices to treat disabilities and neurological disorders. Upon de novo review, we find the Petitioner did not demonstrate by a preponderance of the evidence that her endeavor satisfies the national importance element of Dhanasar 's first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of 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,

the Director properly analyzed the Petitioner's documentation and weighed her evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

The Petitioner's resume and recommendation letters only address her past accomplishments as a physical therapy specialist impacting her workplaces and patients, and do not address the national importance of her endeavor's "potential prospective impact." This type of evidence relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Dhanasar, 26 I&N Dec. at 890. Under Dhanasar 's first prong, the issue is whether the specific endeavor that the Petitioner proposes to undertake has national importance. For instance, a letter from a physician colleague highlights the Petitioner's work contributions to the hospital and patients, including complex respiratory emergency cases. The letter praises the Petitioner's work, stating, "All care provided in conjunction with [the Petitioner] had significant impact on our patients, as her great experience and agility significantly helped us save many lives." Letters from other coworkers praise the Petitioner's respiratory care experience and importance to the hospital and its patients.

We acknowledge that the Petitioner provided valuable physical therapy care for her employers and patients in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor will rise to the level of national importance, rather than only impacting her employer and patients. 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. The letters do not indicate that the Petitioner's work will have national or global implications in the field of physical therapy.

To further support the national importance of her endeavor, the Petitioner submitted an expert opinion from [redacted] professor for the nursing department at [redacted] Institute in New York. The opinion, however, focuses on the Petitioner's work being "in an area of substantial merit and national importance." It describes how the United States will continue to a have a major shortage of physical therapists over the next five years based on its aging population with chronic illnesses, an increasing amount of people covered by health insurance, and an anticipated increase of patients utilizing physiotherapy devices. The opinion focuses on the need for physical therapists and how the Petitioner's experience makes her well positioned to fill a physical therapy specialist job, instead of the Petitioner's specific endeavor having a prospective impact in the field of physical therapy.

The Petitioner highlighted the economic and social importance of physical therapy by providing reports and articles focusing on the industry's national shortage of qualified physical therapists; assistance to the growing aging population; and potential to reduce opioid use, prescribed medications, and other expensive medical interventions. While the reports and articles demonstrate the field of physical therapy is important, they do not necessarily establish the national importance of the Petitioner's proposed endeavor. We agree with the Director that the Petitioner's emphasis on the occupational shortage of physical therapists "does not, by itself, establish that [the Petitioner's] work stands to impact the broader field or otherwise have implications rising to the level of national importance." 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" and its potential prospective impact in the

field. 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.

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 contemplated by Dhanasar. The record does not support that the Petitioner's proposed work as a physical therapy specialist with a healthcare facility stands to have wider implications in the field of physical therapy or the U.S. healthcare industry. While we agree that the field of physical therapy has significant merit, the evidence and arguments provided do not support a finding that the Petitioner's specific proposed endeavor has national importance.

Upon de novo review, we agree with the Director's determination that the Petitioner did not merit a discretionary waiver of the job offer requirement in the national interest.

III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the 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.