



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 28804830

Date: NOV. 07, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist and entrepreneur, 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). 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 record did not demonstrate the Petitioner 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.<sup>1</sup> 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.*

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

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<sup>1</sup> 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.

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<sup>2</sup>, 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 establish a physical therapy and pilates clinic business in the United States having previously worked as a physiotherapist, physical therapist, and pilates instructor in Brazil. The Director determined that the Petitioner established eligibility for the underlying EB-2 immigrant as a member of the professions holding an advanced degree.<sup>3</sup>

However, the Director determined that 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, he did not establish that the proposed endeavor is of national importance, as required by the first prong of the Dhanasar framework. The Director further found that the Petitioner did not establish he is well positioned to advance the proposed endeavor under the second prong of Dhanasar, or that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.<sup>4</sup>

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.” Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a physical therapy and pilates clinic business for which he would be its chief executive officer, technical director, and head physical therapist. The business plan indicates that the Petitioner and another individual would own the business with its main office in [redacted] New Jersey and future franchised clinics in other States, “especially in underserved areas and underdeveloped communities, contributing to the development of these regions.” The Petitioner’s

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<sup>2</sup> 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).

<sup>3</sup> To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma indicating he earned the title of bachelor in physiotherapy from [redacted] in Brazil on July 21, 2010; the corresponding academic transcripts; an academic evaluation; and letters from his previous employers. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor’s degree in physiotherapy and at least five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

<sup>4</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

statement indicates the business would focus on “rehabilitation for acute and chronic cases throughout the [United States], serving individuals and companies with specific needs. The clinic will also focus on post-COVID-19 [sic] care, an important public healthcare issue that has been mapped by the US Centers for Diseases Control and Prevention.” The business plan indicates the clinic would serve individuals of all ages, but “will focus on the elderly, serving this large portion of the population that needs [sic] specific services.” We agree with the Director that the Petitioner’s endeavor has substantial merit.

Even though the Petitioner’s proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that his “proposed endeavor has implications at a level sufficient to establish the national importance of the endeavor.” Therefore, the Director found that the Petitioner did not establish his burden in meeting the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not giving “due regard” to the evidence submitted, specifically the Petitioner’s resume outlining his experience; his business plan describing his professional accomplishments and his proposed business’ potential benefits; letters of recommendation attesting to his work in the field; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we find the Petitioner did not demonstrate that his proposed 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 the evidence to evaluate the Petitioner’s eligibility by a preponderance of evidence.

On appeal, the Petitioner argues that his proposed endeavor has national importance, particularly because it will “generate substantial ripple effects upon key healthcare activities on behalf of the United States” and would be “a vital aspect of U.S. physical therapy operations and productivity, [sic] which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.” (emphasis omitted). The Petitioner stresses his more than 12 years “of progressive experience and acumen in the healthcare field” and his educational credentials to argue that his “work offers broad implications to the United States’ physical therapy industry, specifically through his endeavors within key commercial segments.” (emphasis omitted). The Petitioner argues his proposed endeavor will benefit the United States “by creating jobs and economic stability.” He relies on his background to emphasize that he “has brought numerous advantages to the organizations that he has served . . .” by stimulating “his served companies’ economic capacities” and prioritizing “customer satisfaction by ensuring all clients are aligned with their actual needs, furthering customer loyalty.”

The Petitioner argues the United States “would benefit from investing in well-versed physical therapy professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets

for U.S. environmentally friendly organizations in regions that are economically and politically strategic, yet extremely complex.” (emphasis omitted). He contends his “proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape.” The Petitioner asserts his “proposed endeavor is clearly of national importance, when considering how much a professional with his caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification.” (emphasis in original).

However, the Petitioner’s reliance on his academic credentials, professional experience, and achievements to establish the national importance of his proposed endeavor is misplaced. His academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which “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 his work. See *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 his field more broadly. *Id.* at 893. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the fields of physical therapy and pilates, 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 business would impact the physical therapy and pilates fields more broadly.

With the petition, the Petitioner submitted his statement and a business plan contending his proposed endeavor has national importance based on his business mitigating the shortage of healthcare professionals in the United States and its potential economic benefits. The Petitioner’s statement explains that individuals in the United States have been managing pain with opioids which masks pain instead of treating its cause. By establishing a business focused on physical therapy for pain management and treatment, the Petitioner states that his work would have broader implications in the healthcare field by helping “mitigate the shortage of healthcare professionals” and supporting “the high-growth U.S. healthcare sector.”

While we recognize that a shortage of physical therapists and healthcare professionals 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 fields. 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 his proposed endeavor would affect national physical therapy and healthcare 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 therapy or healthcare professionals.

The Petitioner further claims that his proposed endeavor would have economic benefits to the United States by creating jobs for U.S. workers in underserved areas, increasing revenue to the U.S. and local economies, and generating taxes for the United States and local communities. The business plan briefly states that it proposes to establish the business in underutilized business zones of New Jersey, claiming this will generate jobs for U.S. workers in these underutilized areas and will help economic growth in the regions. However, the Petitioner has not provided corroborating evidence to support his claims that his business' activities stand to provide substantial economic benefits to the United States and to underserved areas of New Jersey.

The business plan projects that in five years the business will hire 63 employees and will generate taxes of over a million dollars. 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's claims that his physical therapy and pilates clinic business will benefit the U.S. and local economies has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate his endeavor has the potential to provide economic benefits to the United States or local communities. The Petitioner must support his assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 63 jobs and generating taxes of over a million dollars over a five-year period rises to the level of national importance.

The Petitioner's statement and business plan mainly describe his academic credentials and professional experience; the ownership of the business and its initial source of capital; primary activities and services of the physical therapy industry; targeted market of individuals and businesses; importance of utilizing technology; importance of physical therapy field to the U.S. economy and healthcare; the aging population in the [redacted] area of New Jersey; services offered; an analysis of the expected growth of the physical therapy industry; the markets and competition of the physical therapy field; and the business' projected marketing, staffing, franchise expansion, and finances. However, it does not sufficiently document the potential prospective impact, including the asserted economic benefits to New Jersey or the United States. Also, without sufficient documentary evidence that his proposed job duties as the chief executive officer, technical director, and head physical therapist of his physical therapy and pilates clinic business would impact the physical therapy and pilates industries more broadly, rather than benefiting his business and his proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

The Petitioner further claims on appeal that the national importance of his proposed endeavor is evidenced in industry reports and articles. The reports and articles relate to the physical therapy job outlook; student loan financing; physical therapy industry and patient access; importance of physical therapy; issues in the physical therapy field; musculoskeletal care in the United States; benefits of technology use in healthcare; occupational therapy field; and the economic benefits of immigrants and entrepreneurship. We recognize the importance of the physical therapy industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in physical therapy field or starting a physical therapy and pilates clinic business is insufficient to establish the national importance of the proposed endeavor. Instead, we

focus on the “the specific endeavor that the foreign national proposes to undertake.” See Matter of Dhanasar, 26 I&N Dec. at 889.

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, job creation, or benefits to the physical therapy and pilates fields specifically attributable to the Petitioner’s proposed endeavor.

To further support the national importance of his endeavor, the Petitioner submitted an opinion from [redacted] professor for the nursing department at [redacted] 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 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 suffering back, knee, and other physical injuries needing physical therapy; and the importance of physical therapy to the healthcare field. The opinion focuses on the need for physical therapists and how the Petitioner’s experience makes him 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 submission of letters from experts supporting the 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.

The Petitioner does not demonstrate that his proposed endeavor extends beyond his business and his 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, he has not demonstrated that the work he proposes to undertake as an owner, chief executive officer, technical director, and head physical therapist of his proposed physical therapy and pilates clinic business offers original innovations that contribute to advancements in his industry or otherwise has broader implications for his field. The economic and healthcare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between his proposed business’ physical therapy and pilates work and the claimed economic and healthcare results.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s eligibility and appellate arguments under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (“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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.