



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

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

In Re: 28401959

Date: SEP. 05, 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. *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 a national interest waiver. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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,<sup>1</sup> grant a national interest waiver if the petitioner demonstrates that:

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<sup>1</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).

- 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.<sup>2</sup>

## II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal 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.

### A. Substantial Merit and National Importance

The Petitioner intends to provide physical therapy services in the United States. The Petitioner initially included a professional plan and statement in which she provides the following explanation of her endeavor:

My career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients. My extensive career, working with patients with a wide array of injuries and illnesses will be beneficial to the U.S. health industry, which is experiencing a high demand for physical therapists.

My specific endeavor will potentially impact the U.S. in the following ways:

- Fill a position as a Physical therapist that is vacant due to high demand for physical therapists but lack of qualified physical therapists;
- Provide patients with a proper diagnosis;
- Educate other physiotherapists on proper techniques and treatments; and
- Monitor and manage other therapists, assistants, and others involved in the diagnosis and recover process.

The Director sent a request for evidence (RFE) requesting, in part, that the Petitioner clarify her proposed endeavor and submit evidence to demonstrate its substantial merit and national importance. In response to the RFE, the Petitioner submitted a business plan describing her intention to develop and operate a physical therapy clinic in [REDACTED] Florida, stating, additionally, that the company “intends to open new units in other states like Georgia and Alabama and cities such as [REDACTED] and [REDACTED] (Florida) with great potential for success.” The Director determined that the Petitioner’s endeavor has both substantial merit and national importance. The Director’s decision states that the “endeavor is clearly of national importance to the United States where many business professional[s], much like herself, are starting new businesses in order to help the U.S. economy get back on its feet after the financial halt and strains caused by the COVID-19 pandemic.” The decision lists the evidence submitted that informed the Director’s determination: education documentation, support letters, a personal statement, a business plan, and “[o]ther material.”

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The first prong, substantial merit and national importance, focuses on the specific endeavor that 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.

While we agree that the Petitioner's proposed endeavor has substantial merit, we do not agree with the Director's determination that the endeavor has national importance. Because we conclude below that the Petitioner did not establish her eligibility for a national interest waiver under the second prong of the *Dhanasar* framework, we need not fully address the Petitioner's eligibility under the first prong. However, we will discuss the issue to inform the Petitioner that this should be addressed in any future national interest waiver proceedings.

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 *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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. Further, 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.

The Petitioner has not demonstrated that the endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. The Petitioner's business plan describes her intention to develop and operate a physical therapy center and to positively impact the U.S. economy by creating jobs in a field for which there is a talent shortage. The business plan explains that the Petitioner and a partner will each initially invest \$300,000 into the business and will reinvest profits to grow the business; the plan includes forecasts that anticipate a sixty-two-member staff and revenue totaling \$5,576,812.50 by the company's fifth year of operation. There is no explanation, however, of the origins of those estimates or any indication of how they were calculated. In addition, the record does not include documentation concerning the existence of the \$600,000 in initial investment funding. Absent probative evidence to show the realistic development of the business, it is not evident that the company will generate revenue to create jobs, to expand, or to otherwise notably impact the economies of the cities in which it intends to operate.<sup>3</sup> Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that potential benefits to the U.S. regional or national economy resulting from the Petitioner's company would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Further, while the record includes several letters from previous employers, colleagues, and professors that speak to the Petitioner's experience and skillset, neither these nor an expert opinion letter provide

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<sup>3</sup> The Petitioner must support assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369 at 376.

insight as to how the Petitioner intends to impact the field or the economy more broadly as an individual working as a manager of a physical therapy center. And although the Petitioner cites articles and an industry report in the record that discuss the duties of physical therapists and the “steep shortage in the U.S. of professionals with her profile in the field,” she does not explain how her work will address a national talent shortage or affect the fields of physical therapy or healthcare management. The evidence does not show how her work will have a positive impact on entities outside of that of her immediate employer or patients. In addition, her argument on appeal that labor certification requirements should be waived due to a labor shortage is not persuasive, as the purpose of the labor certification process is to identify jobs where there are no qualified, willing, and available U.S. workers. 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. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond her company and its clientele to impact the physical therapy field or the U.S. economy more broadly at a level commensurate with national importance.

Finally, we note that several inconsistencies in the record make it difficult to understand the Petitioner’s specific endeavor. While the business plan submitted in response to the RFE focuses on her entrepreneurial endeavor to create and operate a physical therapy facility, her initial cover letter describes the endeavor as follows:

[The Petitioner] intends to advance her career as a Physical Therapist, to advise on clinical patient care in Physiotherapy, Muscle Therapy, Orthopedic Therapy, Biomechanical Physiotherapy, and Sports Physiotherapy, improving Healthcare in the United States, as well as to implement and advise in the management and marketing of commercial activities of U.S. Physiotherapy Device manufacturers and Physiotherapy institutions, operating or planning to operate in Brazil, as well as implementing her skills to advance the United States Healthcare field.

...

The Global Physiotherapy Devices market is anticipated to experience a prominent surge in demand over the coming years. Hence, the market players want to optimize the lucrateness of their operations within the market by resorting to a range of business strategies.

The Petitioner’s cover letter submitted in response to the RFE includes the following description of her endeavor:

[The] proposed endeavor will substantially enhance the U.S. business and physical therapy field, as well as the national economy. Based on her experiences, she will be able to utilize her skills and knowledge to work in Physical Therapy and make contributions of major significance to the industry here in the U.S. as she has proven to be an achiever with exceptional ability and skill in her field in Brazil. In fact, her intimate knowledge of the Brazilian Healthcare arena will be vital to the success of existing and future physical therapy related exporting companies within the United States.

...

Furthermore, in addition to helping the physical therapy industry in the U.S., [the Petitioner] can also help U.S. businesses develop cross-border projects abroad, particularly in Latin America. She can provide significant benefits facilitating business operations of U.S. Health related corporations and U.S. investors interested in making investments and developing productive relationships in the lucrative Physical Therapy field in the Brazilian and Latin American markets.

[The Petitioner's] career plan in the United States is to continue working in Physical Therapy with multi-national companies, providing indispensable guidance regarding national and cross-border contracts involving the development of different Healthcare ventures in the U.S. and Brazil. Her leadership and management skills will be an asset, as she will be able to maximize efficiency and productivity for companies in these sectors. Her strong interest for new products and methodologies will surely serve the national interest of the United States.

In contrast to the business plan, the cover letters in the record indicate that the Petitioner's endeavor will be advisory in nature; they imply that the Petitioner will be involved with other businesses in the healthcare industry or with investors in the industry. An additional explanation or other details concerning these elements of the Petitioner's endeavor are not included in the business plan or in other documentation in the record. As it is not clear what specific endeavor the Petitioner intends to pursue in the United States, we cannot conclude whether or not she has proposed an endeavor of national importance. Therefore, based on the record, the Petitioner has not established the national importance of her proposed endeavor. We will withdraw the Director's finding on this issue. In any future national interest waiver proceedings, the Petitioner must establish that she qualifies under the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

The Director determined that the Petitioner did not establish that she is well positioned to advance her proposed endeavor. The Director's decision states, in part, that the evidence does not demonstrate that she has achieved significant accomplishments or gained recognition in the field of physical therapy. The Director also cites the fact that the record does not include documentation showing interest in her endeavor from investors or other relevant parties beyond that of an individual whose undated letter of interest to invest is "brief and more of a casual letter without any commitment or contracts." The Director stated that there is no evidence in the record of the Petitioner's progress towards advancing her endeavor.

On appeal, the Petitioner asserts that, rather than applying the governing standard of review, preponderance of the evidence,<sup>4</sup> the Director “imposed novel substantive and evidentiary requirements beyond those set forth in regulations.” Although the Petitioner asserts that she has provided evidence sufficient to demonstrate her eligibility for a national interest waiver, she does not further explain or identify any specific instance in which the Director denied her petition applying a standard of proof other than that of preponderance of the evidence. The Petitioner also asserts that USCIS “did not give due regard” to that evidence. Additionally, the Petitioner’s brief provides the following:

[The Petitioner’s] technical expertise and experience in a wide range of highly specialized physical therapy practices make her highly qualified to keep advancing her proposed endeavor in the United States. She has provided treatments...that have significantly impacted patients’ quality of life. Her past work has enabled her to develop an expertise in physical therapy techniques, industry trends, and business management success, which will have a significant and beneficial impact on the U.S. population’s health.

The U.S. Business Plan and Resume provide evidence of [the Petitioner’s] continued plans and progress to drive her proposed endeavor forward in the nation. This document, along with other submitted evidence, shows how she possesses the qualifications, support, and commitment to carry out her proposed endeavor within the nation.... Statements from experts in the field attest to her exceptional abilities as a Physical Therapist/Entrepreneur and her track record of success in related efforts.

Her unique knowledge in physiotherapy enables her to treat patients with chronic conditions, illnesses, diseases, and/or injuries. She implements advanced protocols to alleviate patients’ pain conditions, and her treatments have shown to improve patients’ health, wellness, and movement, while also helping them manage their pain in natural, long-term capacities.

Letters of support from the Petitioner’s current and former employers, colleagues, clients, and professors convey her as highly competent in the performance of her work. However, the letters do not identify “unique knowledge in physiotherapy” or specify an area of “expertise in physical therapy techniques” that the Petitioner asserts qualify her as well positioned to advance an endeavor of national importance. We note that the record contains a single letter from a purported expert in the field that discusses the field of physical therapy generally and, in describing the Petitioner’s experience and abilities, reflects only the Petitioner’s own description of her qualifications. Although the remaining letters provide evidence to demonstrate that the Petitioner was a valuable asset to her employers, colleagues, and clients—and may prove to be so in a healthcare setting in the future—they do not clarify how the Petitioner’s qualifications as a physical therapist show that she is well positioned to advance an endeavor of national importance. The Petitioner has not provided evidence to demonstrate a record of success such as published articles or media reports about her achievements or current work, or evidence that her work has influenced her field of endeavor. The record does not include evidence to demonstrate that the Petitioner has made progress in advancing her business, such as documentation

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<sup>4</sup> See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

related to establishing a location for the business or acquiring any necessary material or equipment to operate the business, nor does the record include evidence related to any individuals that the Petitioner anticipates hiring for the positions described in her business plan. The record also does not contain probative evidence to support the Petitioner's statements that she has a level of expertise or access to specific resources—such as investment funding of \$600,000—that would serve to advance her endeavor. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 at 376.

Further, as stated previously, the Petitioner's description of her endeavor is ambiguous and inconsistent. The various descriptions of her endeavor include the following: 1) overseeing healthcare clinics with dozens of employees, 2) working in the field of healthcare device exports, 3) advising businesses and investors in the healthcare field. The record includes documentation of the Petitioner's education, training certificates, and previous employment as a physical therapist; however, the Petitioner has not provided evidence of qualifications beyond those expected of an individual working in a physical therapy occupation. We cannot make a determination as to whether the Petitioner is well positioned to potentially achieve a specific endeavor. The Petitioner has not established that she is well positioned to achieve a proposed endeavor.

The record does not establish the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. 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 agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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

The Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

**ORDER:** The appeal is dismissed.