U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28449576

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that waiving these U.S.-worker protections would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category. But the Director concluded that the Petitioner did not establish a waiver's merits. On appeal, the Petitioner contends that the Director overlooked evidence that her proposed endeavor has "national importance" and that, on balance, a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we affirm the Director's finding that the Petitioner did not establish the claimed national importance of her proposed venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category generally requires prospective employers to offer jobs to noncitizens and obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that, in 2010, a university in the Petitioner's home country of Brazil awarded her a degree in physical therapy. She then worked in Brazil as a physical therapist/Pilates instructor for about eight years.

In 2018, the Petitioner came to the United States. She proposes to continue providing physical therapy/Pilates services in this country through her own firm. She states that the firm would provide physical wellness, physical training, and physical therapy services. Online government records show that she established a limited liability company (LLC) in Massachusetts in July 2023, about two months after filing this appeal. Sec'y of the Commonwealth of Mass., Corps. Div., "Search for a business entity," https://corp.sec.state.ma.us/corpweb/corpsearch/CorpSearch.aspx. Her business plan projects that, within five years of operations, the LLC would generate about $2.77 million in revenues and employ 35 people.

B. EB-2 Eligibility

The Petitioner submitted an independent, professional evaluation of her foreign educational credentials. The evaluation states that her Brazilian degree - a *titulo de fisioterapeuta* - equates to a U.S. bachelor's degree in physical therapy. She also provided letters from employers, former co-workers, and former patients confirming that she has more than five years of post-degree experience in physical therapy and Pilates. We therefore agree with the Director that the Petitioner qualifies for EB-2 classification as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

A venture may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record contains evidence that the Petitioner's proposed U.S. work could help alleviate a shortage of physical therapists in the country, generate jobs, reduce healthcare

costs, and improve the quality of patients' lives. We therefore also agree with the Director that the Petitioner's proposed venture has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the economic and healthcare benefits from the Petitioner's proposed endeavor would reach beyond her firm, its employees, and its patients.

On appeal, the Petitioner asserts that her proposed endeavor:

> is national in scope, as her professional activities relate to a matter of *national importance* and *impact*, particularly because they generate substantial ripple effects upon key **medical** activities on behalf of the United States. Her proposed endeavor is a vital aspect of U.S. **physical therapy** operations and productivity - which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy.

(emphasis in original). The Petitioner asserts that her physical therapy firm would create jobs and "economic stability" in the United States. She also states that "she is set to help the U.S. stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy."

As the Director found, however, the record does not sufficiently demonstrate the claimed national importance of the Petitioner's endeavor. Her five-year projections of $2.77 million in revenues and employment of 35 workers indicates that her business would lack the size or scope to substantially affect the national economy. Also, she has not established that her venture would benefit an economically depressed area. Further, the Petitioner has not demonstrated that her endeavor would introduce advancements to the U.S. healthcare field.

We acknowledge that the Petitioner's business could *help* boost the U.S. economy and healthcare field. But, as previously indicated, when considering national importance, we must focus on the *particular* endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake.") Thus, the Petitioner's *specific* venture itself must have substantial national implications, not merely the potential to help boost the U.S. economy or healthcare field when combined with benefits from other businesses. *See id.* at 889-90 (stating that an endeavor may have national importance if it has

"*significant* potential to employ U.S. workers" or "other *substantial* positive economic benefits, particularly in an economically depressed area") (emphasis added).

The Petitioner also details her physical therapy experience, asserting that her "professional record mirrors how her line of work offers broad implications to the United States' **physical therapy** industry, specifically through her endeavors within key commercial segments." (emphasis in original). But, as previously indicated, when considering national importance, USCIS focuses not on the petitioner but on their specific endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Thus, the Petitioner's education, training, and experience do not establish her venture's national importance.

The Petitioner has not demonstrated that her proposed endeavor has national importance. We will therefore affirm the Director's decision.

E. A Waiver's Benefits to the United States

Our conclusion that insufficient evidence supports the claimed national importance of the Petitioner's proposed endeavor resolves this appeal. Thus, we decline to reach and hereby reserve consideration of her appellate arguments regarding a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that her proposed endeavor has national importance. As she does not merit a national interest waiver under the *Dhanasar* framework, we will affirm the petition's denial for lack of a job offer and labor certification.

ORDER: The appeal is dismissed.