



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

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

In Re: 31650150

Date: JULY 15, 2024

Appeal of Texas 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 or as 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 Texas Service Center denied the petition, concluding the Petitioner had not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that a waiver of the required job offer, and thus of the labor certification, would be 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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 discretion,³ 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.

Id.

II. ANALYSIS

A. EB-2 Classification

The Director concluded the Petitioner had not established eligibility for EB-2 classification as an advanced degree professional on the basis that she did not show she has at least five years of progressive post-baccalaureate experience in the specialty. However, we disagree and hereby withdraw the Director’s conclusion. The Petitioner provided letters from former employers that include the name, address, and title of the writer, and a description of the duties performed by the individual, as well as whether the position was full-time or part-time. Therefore, the provided letters meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B), and the Petitioner has established eligibility for the EB-2 classification as an advanced degree professional.⁴

¹ If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

⁴ As the Petitioner has established eligibility for the EB-2 classification as an advanced degree professional, we will not discuss her eligibility for EB-2 classification as an individual of exceptional ability.

B. National Interest Waiver

The Petitioner proposed to work as a physical therapist and provide “specialized services in Neurology and Education to impact the field of Physical Therapy through innovation in the U.S.”

The Director determined the Petitioner demonstrated that her proposed endeavor was of substantial merit. However, the Director also concluded the Petitioner did not establish that her proposed endeavor had national importance. On appeal, the Petitioner contends the Director erred in their determination that she did not establish the national importance of her proposed endeavor and asserts she qualifies for a national interest waiver. She further asserts her proposed endeavor has “significant impact on the nation’s health, economy, and societal welfare.”

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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. 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.* at 889-890.

The Petitioner contends that her endeavor is nationally important because it addresses “critical health issues in the United States, particularly in preventive care, rehabilitation, education, and treatment for various chronic conditions” and noncommunicable diseases. The Petitioner also asserts her endeavor’s “impact extends beyond individual health to societal welfare” because it “addresses the lack of access to rehabilitation services in underserved areas” and that the economic implications of her endeavor are substantial.” However, the Petitioner does not provide support for these assertions, nor does the evidence on record establish that her endeavor will directly result in broader implications to the field or provide sufficient contributions to these efforts beyond benefits to her prospective patients. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. US. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. Here, the Petitioner has similarly not established that her proposed endeavor stands to sufficiently extend beyond her future patients. Nor has she demonstrated that her work as a physical therapist would broadly enhance societal welfare at a level commensurate with national importance.

The Petitioner also notes that her proposed endeavor aligns with U.S. government initiatives, including the Individuals with Disabilities Education Act. However, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Id.* at 889. Rather, when determining whether the proposed endeavor has 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.” *Id.* Thus, while we acknowledge that the healthcare industry is important, this fact is insufficient to establish the national importance of her proposed endeavor.

Finally, the Petitioner does not show that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, the record does not demonstrate benefits to the U.S. regional or national economy reaching the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

III. CONCLUSION

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them.⁵ The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁵ 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 alternate issues on appeal where an applicant is otherwise ineligible).