U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26965266

Date: JUNE 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, seeks 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial

merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to work with a health care facility to provide expert advice and treatment to patients, in addition to possibly working to teach new [p]hysical [t]herapists." The Petitioner further stated, initially:

> My specific endeavor will potentially impact the U.S. in the following ways:
>
> - Fill a position as a [p]hysical [t]herapist that is vacant due to a high demand for physical therapists but lack of qualified physical therapists;
> - Provide patients with a proper diagnosis;
> - Educate other physical therapists on proper techniques and treatments; and
> - Monitor and manage other therapists, assistants, and others involved in the diagnosis and recovery process.

In a request for evidence (RFE), the Director informed the Petitioner, in relevant part, "The record is devoid of any evidence establishing a broad prospective impact on the field of physical therapy or on U.S. health outcomes from a single individual practicing physical therapy from a single facility." The Director acknowledged that the Petitioner submitted "various reports and articles concerning the growth of the physical therapy occupation in the coming years, as well as the state of the physical therapy occupation and the U.S. economy." However, the Director observed that "none of the evidence on file directly discusses or is related to the [P]etitioner's specific proposed endeavor of, herself, being employed as a [p]hysical [t]herapist." The Director further explained the distinction between working in an area of national importance and the requirement that a specific proposed endeavor itself must have national importance. Thus, the Director requested additional evidence that may establish the specific proposed endeavor has national importance, as required.

In response to the Director's RFE, the Petitioner stated, for the first time, that her proposed endeavor would entail "developing and expanding my own [p]hysiotherapeutic [s]ervices . . . firm that provides treatment to patients with neurological, respiratory, and motor difficulties, with special emphasis on

children with neurological disorders . . . based out of the state of Florida." She further asserted that, rather than filling a vacant physical therapist position as initially stated in support of the petition, she "will serve as the company's [l]ead [p]hysiotherapist" and that she "will hire several qualified U.S. professionals . . . to fulfill other specialized positions in various positions, including [p]hysiotherapists, [a]ccountant, [a]ssistants, and other necessary positions." The Petitioner also submitted a business plan for her startup physiotherapeutic services company in response to the RFE. The business plan is dated September 2022, after the petition filing date. We further note that publicly available information indicates that the Petitioner's startup physiotherapeutic service company first incorporated in Florida on [redacted] 2020, also after the petition filing date. *See generally* State of Florida, Division of Corporations, *Search for Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks by Name*, https://search.sunbiz.org/Inquiry/CorporationSearch/ByName.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Whether the Petitioner would fill a vacant physical therapist position at an existing healthcare facility or found a new healthcare facility and both work as a physical therapist and hire other physical therapists to work at that new healthcare facility is material because it addresses the scope of the proposed endeavor and whether it may have substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90. Because the Petitioner indicated, at the time of filing, that her proposed endeavor would entail filling a vacant physical therapist position at an existing healthcare facility, and moreover because publicly available information indicates that her startup company was founded after the time of filing, her assertions in response to the RFE regarding that new startup company present a new set of facts that purport to materially change the petition and, thus, cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 15 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176. Because the business plan submitted in response to the RFE and the Petitioner's related assertions regarding founding that company and working as its lead physiotherapist cannot establish eligibility, we need not address that information further.

The Director noted that the Petitioner's RFE response improperly "presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver," as discussed above. Based on the information that may establish eligibility, the Director asserted, "USCIS cannot determine from the record that the proposed endeavor will have substantial merit." The Director observed that "the [P]etitioner's proposed endeavor appears to have limited impact to her individual patients." The Director found that "[t]he record is devoid of any evidence establishing a broad prospective impact on the field of physical therapy, on the overall health of U.S. citizens, or the U.S. economy." The Director further noted, "Even if the [P]etitioner claims there is a shortage of [p]hysical [t]herapists and her proposed endeavor will help train more [p]hysical [t]herapists in the United States, the record does not support such a resolution that would have broad impact to the occupational shortage in the United States." Thus, the Director concluded, "The [P]etitioner's endeavor is not reflective of national importance." The Director further concluded that the record does

not satisfy the second and third *Dhanasar* prongs, as required. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner summarizes her academic and prior employment history and she asserts that her proposed endeavor has national importance because it "aligns with U.S. national interest in developing public health and meeting the market demands regarding accurate and efficient solutions, thereby alleviating pain from patients who are suffering from negative health impacts." The Petitioner also references generalized publications regarding anticipated growth in "the field of physical therapy . . . between 2020 and 2030." The Petitioner also discusses the business plan she submitted in response to the Director's RFE.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's reliance on appeal on her academic and prior employment history is misplaced. Although an individual's academic and prior employment history are material the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether the prospective endeavor has both substantial merit and national importance. *See id.* at 888-91.

In turn, the Petitioner's focus on appeal on generalized publications regarding the field of physical therapy and anticipated industry growth trends is misplaced. As noted above, in determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.* at 889. None of the articles referenced on appeal specifically identify the Petitioner and her proposed endeavor, nor do they articulate how the specific endeavor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We note again that the Petitioner's emphasis on appeal on the business plan she submitted for the first time in response to the Director's RFE is misplaced because it presents a new set of facts that cannot establish eligibility; thus, we need not address the substance of those assertions further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 15 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. at 176.

Turning to the Petitioner's endeavor as established at the time of filing, the proposal to fill a vacant physical therapist position at an existing healthcare facility appears to benefit the Petitioner's potential employer(s) and the clients or patients to whom she may provide care. However, the record does not establish how diagnosing and treating an unspecified number of individual patients as a physical

therapist working at a single healthcare facility may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90. Relatedly, the record does not establish how the proposed endeavor of educating and monitoring other workers at the healthcare facility that may employ the Petitioner may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects. *See id.* Because the record does not establish how the Petitioner's endeavor, as established at the time of filing, may have national or even global implications within a particular field, broader implications, or other substantial positive economic effects, it does not establish the proposed endeavor has national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record establishes that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong, and whether the record satisfies the second or third *Dhanasar* prong. *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 conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.