



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

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

In Re: 25690610

Date: MAY 04, 2023

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. *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 did not establish that her proposed endeavor has national importance, that she is well positioned to advance the proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification. 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

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.” 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions with 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 a labor certification, would be in the national interest.

The Director determined that the Petitioner did not meet any of the three prongs of the *Dhanasar* framework. On appeal, the Petitioner alleges that, rather than applying the governing standard of review, preponderance of the evidence,³ 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 alleges that the Director “[issued] a denial without warranting the Appellant the opportunity to present additional evidence and cure any questions raised by the adjudicating Officer....” The record shows that the Petitioner did, in fact, receive and respond to a request for evidence (RFE); an RFE was issued on April 26, 2022, and the Petitioner’s response—which includes a date-stamped copy of the RFE—was received on September 19, 2022.

For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her endeavor in order to establish her eligibility under the first prong of the *Dhanasar* analytical framework. 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.

The Petitioner initially submitted the following statement:

My career plan in the United States is to work with a health care facility to provide expert advice and treatment to patients, in addition to possibly working to teach new Physical Therapists. My experience will allow for even more highly skilled physical therapists to enter the healthcare field in the U.S., which will curb the shortage, increase revenue, benefit the economy, and enhance overall patient health.

Regarding the first prong, the Director found that the proposed endeavor had substantial merit; however, the Director issued an RFE requesting additional evidence to establish the national importance of the proposed endeavor. In response, the Petitioner referred to herself as an entrepreneur and submitted a business plan for a company that she wishes to operate with two additional partners providing services

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

³ 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 orthopedic physical therapy rehabilitation, respiratory therapy, neurological rehabilitation therapy, as well as hosting Pilates sessions. The business plan refers to the Petitioner's role at the company as a "business administrator," a "business manager," and "CEO." The business plan states the following (quoted as written):

[The Petitioner's company] is set to impact the Physical Therapy Rehabilitation Services industry with a Total Payment of Wages of 7.63 million dollars in a total of (5) years of operation, in the State of Florida, generating (65) direct jobs for U.S. workers, helping the U.S. citizens improve their daily quality of life and safety. The Business Plan projects 13 million dollars in revenue for the first (5) five years.

The Petitioner's initial description of her proposed endeavor did not indicate plans to form a company; the Petitioner initially intended to "work with a health care facility" and to provide instruction to new physical therapists. We conclude that the RFE response presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which requires that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *See also Dhanasar*, 26 I&N Dec. at 889-90. The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner's plans to establish and manage a company were presented after the filing date; as such, the amended endeavor cannot retroactively establish eligibility. A petitioner may not make material changes to a petition that has already been filed to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

In response to the Director's request for evidence to demonstrate how her services would rise to the level of national importance, the Petitioner has significantly changed her proposed endeavor. Notably, the Petitioner does not explain how she would allocate her time between performing physical therapy services initially described as part of her stated endeavor, if any, and serving in a managerial role at her company. Accordingly, we conclude that both the focus of her endeavor as well as her field of endeavor have materially changed. If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. § 103.2(b)(1). For these reasons, the petition may not be approved.

In addition, even if the Petitioner had presented her plans to establish and operate her business at the time of filing, which she did not, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of this endeavor under the first prong of the *Dhanasar* analytical framework. For example, the Petitioner's business plan projects sales that would purportedly allow for the business to grow from a single location in [REDACTED] Florida, to several locations within the state; there is no indication, however, of the manner in which those sales forecasts were calculated. In denying the petition, the Director concluded that the Petitioner had not demonstrated the national importance of her proposed endeavor, as the Petitioner's evidence did not show that her proposed work through the

operation and management of her company would have broader implications at a level indicative of national importance.

On appeal, the Petitioner submits a brief in which she insists that the Director's decision was in error and that the evidence of record establishes her eligibility for a national interest waiver. She reiterates that a part of the national importance of her endeavor lies in the fact that there is a shortage of physical therapists in the United States. However, the Petitioner does not explain how the work of one physical therapist would alleviate a shortage at a nationally important level. The practice of physical therapy directly benefits a small number of individual patients, in a manner comparable to the proposed teaching activity of the petitioner in *Dhanasar*. In that decision, we stated, "While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." We therefore concluded that the teaching element of the proposed endeavor lacked evidence of national importance. *Matter of Dhanasar*, 26 I&N at 893. The impact of the Petitioner's work, both as a therapist and as a teacher, appears to be similarly limited in scope.

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.* at 890. 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.* A shortage of physical therapists in the United States does not render the proposed endeavor nationally important under the *Dhanasar* framework.

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. Although the Petitioner's statements reflect her intention to provide physical therapy services for her company's clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. See *Dhanasar*, 26 I&N Dec. at 893. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her clientele to impact either the physical therapy industry more broadly at a level commensurate with national importance.

In addition, the Petitioner has not demonstrated that her proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the nation. Specifically, she has not shown that her company's business activity stands to provide substantial economic benefits to Florida or to the United States. The business plan does not demonstrate that the benefits to the regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not provided

evidence to establish that the area in which the company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. While the business plan shows that the Petitioner's company will hire sixty-five full- and part-time employees within five years, the plan does not sufficiently detail the basis for the revenue and staffing projections depicted, nor does it adequately explain how the revenue and staffing projections will be realized. The Petitioner's unsupported statements are insufficient to meet her burden of proof. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. While the Petitioner claims that her "proposed endeavor is national in scope, and will produce significant national benefits, due to the ripple effects of her professional activities," she has not shown that the prospective impact of the services offered by her company represents a significant share of the physical therapy market. The Petitioner has not demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified basis for dismissal is 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); *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 demonstrated that her proposed endeavor has national importance. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.