



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

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

In Re: 26931125

Date: MAY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a taekwondo instructor,¹ seeks second preference 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 EB-2 classification. 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 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner shows:

- 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.

¹ See part 5, question 11 of Form I-140, Immigrant Petition for Alien Workers.

² 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).

II. ANALYSIS

The Director concluded the Petitioner qualified as a member of professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest, as a matter of discretion.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial cover letter indicated:

. . . [The Petitioner] intends to advance her career as an Exercise Physiologist and by doing so, develop, implement and advise using her in-depth knowledge acquired through years of experience in the field. [The Petitioner] will make her services available to small and large businesses belonging to both the private and public sectors in the United States. She is determined to use her expertise as a means to complement and enhance businesses in the U.S. and to be a contributing member of American society.

. . . .

Based on her experience, [the Petitioner] will be able to use her set of skills and knowledge to work in Exercise Physiology and make contributions of substantial significance to the health, medical, sports and fitness industries in the U.S. Petitioner's expert and unique skills will be crucial for the well-being of Americans as well as their financial stability as Petitioner's work can address physical and mental chronic diseases. While [the Petitioner's] services are not intended to substitute medical treatment, it can certainly supplement and enhance already diagnosed conditions known to benefit from sports and exercise.

Further, the Petitioner's "Professional Plan" stated:

I intend to continue working as an Exercise Physiologist. I will use my solid scientific/academic knowledge, combined with my practical/professional experience, which has provided me with a unique skill set to develop all my work in a very effective way, guaranteeing the best results. I intend to continue improving my work by constantly updating my knowledge, as demands this continuously evolving field.

. . . .

. . . I intend to continue managing, maintaining good working relationships, and identifying any opportunities for new business in the Exercise Physiology field. My leadership and management skills will be an asset, as I can maximize the efficiency and productivity of people, generating an upturn in the U.S. economy. My goal is to continue working on developing well-being, where I can apply my experience and knowledge of Exercise Physiology acquired throughout my career to solve problems more efficiently,

helping to create new methods that will ultimately generate benefits not only for the individual with whom I will be working directly but also for others around them.

....

. . . I intend to continue my career working with Taekwondo by offering pedagogical projects in schools, social projects, using the techniques I have developed to guide and accompany students with special needs (Down Syndrome, Autism), adapting exercises, including classes with other children, helping with their needs, reporting progress to parents, following medical instructions if the child has any restrictions, and working together with the medical team, performing all my work according to the needs of each client. I am confident that I will contribute to promoting the physical and mental health of citizens, generating revenue and jobs within the United States, benefiting the U.S. economy if my request is approved.

In response to the Director's request for evidence, the Petitioner's cover letter indicated: "[a]s indicated in the newly enclosed Business Plan, [the Petitioner] proposes to direct the operations of direct the operations [sic] of [redacted] (hereafter also referred to as the Company), a U.S.-based provider of nutrition, physical training, and behavioral counseling services" According to the business plan:

[The Petitioner] . . . will direct the operation of [redacted] . . ., a U.S.-based provider of nutrition, physical training, and behavioral counseling services. [The Petitioner] will serve as the Exercise Physiologist of the Company. Under her direction, the Company will create further employment opportunities and qualify individuals to work in the gym, health, and fitness sector, thereby fulfilling U.S. industry needs and benefiting the wider U.S. economy.

....

[redacted] will operate a nutrition, physical training, and behavioral therapy company based in [redacted] New Jersey. The Company will provide services to professional and recreational athletes, adults, and businesspeople looking to improve their health. The Company will offer high-quality and reliable services to its clients.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains that her "Company, [redacted] will conduct business as a nutrition consulting, personal training, and behavioral counseling entity, focusing primarily on athletes, businesspeople, and adults who want to improve their overall well-being and physical health." As indicated, the Petitioner initially claimed that she intended to work as an exercise physiologist and "will make her services available to small and large businesses belonging to both the private and public sectors in the United States." However, in response to the Director's RFE, the Petitioner asserted that she intended to open and operate her own company, [redacted].³ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the

³ We note that her business plan makes no mention of her previous claims of utilizing taekwondo and offering pedagogical projects in schools, social projects, and working with special needs individuals.

time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Accordingly, we will not consider the Petitioner’s materially changed proposed endeavor of opening and operating

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 specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner stresses the importance of exercise and the exercise physiology profession, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular services rather than the importance of exercise and exercise physiologists. In *Dhanasar*, we 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.

In addition, the Petitioner stresses her “career,” “in-depth knowledge acquired through years of experience in the field,” “experience,” and “skills and knowledge.” The Petitioner’s experience and abilities in her field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong.

Moreover, 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 did not offer specific information and evidence to corroborate her assertions that the prospective impact of working as a taekwondo instructor or exercise physiologist 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. *Id.* at 893. Here, the record does not show through supporting documentation how her specific services stand to sufficiently extend beyond her prospective clients, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner did not show that her initial 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 attributable to her future work, the record does not show any benefits to the U.S. regional or national economy resulting from her dental position would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not

demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.⁴

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in 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).