



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

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

In Re: 26957987

Date: MAY 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physical therapist, 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 discretion¹, 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 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's decision did not determine whether the Petitioner qualifies as a member of professions holding an advanced degree. Instead, the Director only addressed the Petitioner's eligibility for a national interest waiver, which is the sole issue on appeal.²

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 she "seeks permanent residency to work as a Physical Therapist in the U.S."

Further, the Petitioner's "Professional Plan & Statement" reflected:

... My goal is to assist the individual when their movement and function are threatened due to factors, such as illness, disorders, aging, and pain, among others. As a Physical Therapist, I will work closely with my patients on the best courses of physical therapy treatment

....

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.

In response to the Director's request for evidence, the Petitioner submitted a business plan and a "Definitive Statement" indicating:

I intend to continue using my expertise and knowledge, gained through more than nineteen (19) years of experience and services in the field of physical therapy, to build a physiotherapy clinic, [REDACTED] in the State of Florida. The company will provide services like PT sessions, TMD sessions, Muscle Chain Treatment sessions, and physiotherapy courses for pregnant women. In fact, the company will provide care that would include both short and long-term functional goals and interventions through all physiotherapy areas.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains she "intends to work in the U.S. business sector, by using her expertise and knowledge from nineteen (19) years of progressive experience and acumen in the physical therapy industry" and references her business plan for [REDACTED]. As indicated, the Petitioner initially claimed that she intended to work as a physical therapist in a healthcare facility. However, in response to the Director's RFE, the Petitioner asserted that she intended to open and operate her own company [REDACTED]. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a

² Because the Petitioner did not establish eligibility for a national interest waiver on appeal, we need not remand the matter to the Director in order to make a determination on the underlying immigrant classification.

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 a physical therapy clinic.

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 she stresses the importance of physical therapists, the Petitioner must demonstrate the national importance of her specific, proposed endeavor of providing her particular physical therapy services rather than the importance of the occupation. 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. We note here the Petitioner also contends the need for physical therapists in the United States. However, the shortage of physical therapists does not render her proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In addition, the Petitioner emphasizes her experience, 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 physical therapist in the healthcare facility, as well as teaching students, 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 patients, clients, or healthcare employers 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 physical therapist 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.³

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.

³ 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).