U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28081539

Date: SEP. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an exercise physiologist who describes herself as a "wellness specialist," 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 a member of the professions holding an advanced degree 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 open her own company in the United States . . . named after the incredibly successful business she had in Brazil." She further asserted that the company's services would "include [p]ilates and [m]assages, among other treatments that assist patients in improving their mobility and overall quality of life."

In response to the Director's notice of intent to deny (NOID), the Petitioner reiterated that her "proposed endeavor is to work in the United States as a [w]ellness [s]pecialist, through my U.S.-established company." The Petitioner described her company as "provid[ing] personalized fitness and rehabilitation services, considering each patient's specific needs." She stated that, through her endeavor, she "will be able to help special minorities of U.S. citizens such as veterans or even elderly people whose pain is usually undermined and not properly taken care of." She further noted, "I am creating my own employment opportunity in the United States." She also asserted the following:

> My endeavor is aligned with the national interest of the United States of America for various reasons, including . . . improving the lives of those who suffer from movement difficulties, chronic pain, and especially those who suffer from cancer[; it] can help further the U.S. government goals related to public health and economic recovery[; it] will contribute to U.S. welfare as it is well established that increased physical activity leads to a more productive workforce[;] I will fulfil the lack of STEM professionals in the sciences field[; and] comply with U.S. national legislation that recognizes the importance of my proposed endeavor as a [w]ellness [s]pecialist, such as the National Pain Strategy and the Patient Access Act of 2021.

We first note that the Petitioner's reference to legislation dated 2021 in response to the Director's NOID is misplaced. 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). The Petitioner filed the Form I-140, Immigrant

Petition for Alien Workers, in November 2020. Therefore, references to legislation dated 2021 cannot establish eligibility at the time of filing in 2020. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. We further note that, even if the legislation the Petitioner referenced in response to the Director's NOID could establish eligibility—which it cannot—Congress has yet to enact the "Physical Therapist Workforce and Patient Access Act of 2021," referenced by the Petitioner; rather, the bill has been merely *introduced* in both the House and the Senate. *See* U.S. Congress, *Legislation*, Advanced Searches, https://www.congress.gov/advanced-search/legislation/. Therefore, the proposed bill does not carry the weight of law, either as of the Form I-140 filing date or thereafter.

We next note that, despite the Petitioner reasserting that she intends to establish a physiotherapy company in the United States and summarizing the general types of services she would provide in response to the Director's NOID, she did not provide operational details such as the annual revenue she expects to receive, any workers—other than herself—she intends to hire, the wages she intends to pay any of her employees (other than her own anticipated annual income), or even the location where her company will operate, beyond indicating a city and state on the Form I-140 with a street address of "TBD" and a ZIP code of "N/A."

The Director acknowledged that the Petitioner's "proposed endeavor has substantial merit in an area such as business, entrepreneurialism, science, technology, culture, health, education, the arts, or social sciences." However, the Director observed that the Petitioner did not "submit a business plan to illustrate the number of individuals her business plans to hire, train and support." Relatedly, the Director noted that "there is no evidence to illustrate that the rate of pay she intends to pay her current or prospective employees would have 'substantial positive economic effects' such as revenue or job creation," referencing *Dhanasar*, 26 I&N Dec. at 889-90. The Director also acknowledged that the record contains a letter from one of the Petitioner's patients; however, the Director found that the record established the Petitioner's endeavor "will have a limited impact to her patients, which is not reflective of having national importance." Based on that analysis, the Director concluded that "the [P]etitioner has not demonstrated that her endeavor is of national importance and has not met the first prong of the *Dhanasar* framework." The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs.

On appeal, the Petitioner first asserts that the Director misapplied the *Dhanasar* framework for determining whether an endeavor has national importance. Specifically, the Petitioner notes that *Dhanasar* acknowledged that "[e]vidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required." *Id.* at 889. Instead, the Petitioner focuses on *Dhanasar*'s passage that "endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." *Id.*

The Petitioner's above discussion of *Dhanasar* on appeal misreads our decision as it applies to determining whether a proposed endeavor will have national importance. Specifically, the paragraph in which the discussion quoted by the Petitioner appears refers to the merit aspect of the first *Dhanasar* prong, acknowledging that evidence of the potential to create a significant economic impact "is not required, as *an endeavor's merit* may be established without immediate or quantifiable economic impact." *Id.* (emphasis added). We acknowledge, though, that the appropriate portion of the *Dhanasar*

framework that applies to determining whether an endeavor has national importance contemplates "broader implications" that are not necessarily quantifiable as a significant economic impact, such as those having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 889-90.

Beyond misreading *Dhanasar*, as discussed above, on appeal the Petitioner quotes her statement submitted in response to the Director's NOID and she asserts that letters of support in the record "elaborate on the significance of [her] performance." She also states that various publications in the record establish "why her profession and proposed endeavor are of [n]ational [i]mportance," and she notes that her endeavor "is aligned with American Government initiatives."

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 ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

We first note that the Petitioner's reliance on the various publications in the record regarding whether her proposed endeavor may have national importance is misplaced. As noted, in determining national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," rather than generalizations about the importance of an industry, field, or profession. *Id.* at 889. None of the publications in the record referenced by the Petitioner on appeal—with titles such as "Sports and Recreation-Related Injuries Top 8.6 Million Annually"—address the Petitioner, her proposed endeavor, or how it may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the publications do not address the Petitioner or her specific endeavor, they do not establish how the Petitioner's specific endeavor may have national importance. *See id.*

We next note that the Petitioner's reference to "American Government initiatives" on appeal is misplaced. In addition to the proposed—but not enacted—"Physical Therapist Workforce and Patient Access Act of 2021," discussed above, the Petitioner also references on appeal the U.S. Department of Homeland Security's Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During the COVID-19 Response, dated August 10, 2021. For the reasons addressed above, neither a Congressional bill introduced—but not passed into law—in 2021 nor a memorandum dated 2021 can establish eligibility at the time the Petitioner filed the Form I-140 in 2020. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. Because the "American Government initiatives" the Petitioner references on appeal cannot establish eligibility, we need not address them further. We also note, however, that even if the referenced memorandum could establish eligibility—which it cannot—it does not address the Petitioner or her specific endeavor and, thus, does not establish how the Petitioner's specific endeavor may have national importance. *See Dhanasar*, 26 I&N Dec. at 889-90.

Next, the Petitioner references on appeal three letters of support in the record: one written by a former supervisor, one written by a patient, and one written by [redacted] who identifies himself as a "Program Director and Full Time Faculty, [redacted] College," although he does not specify what program he directs and what courses he teaches at [redacted] College. For the reasons discussed below, none of the letters referenced on appeal establish how the proposed endeavor may have national importance. *See id.*

The letter from the Petitioner's former supervisor summarizes her duties "while she worked at Hospital [redacted] [in Brazil], from April 2006 to October 2013." The Petitioner's former supervisor also "recommend[s the Petitioner] for her pursuit of the EB2-NIW visa and ensure[s] that her presence in the United States could only be beneficial not only to American citizens in particular but also to the national healthcare system as a whole." However, the letter from the Petitioner's former supervisor does not address any particular detail about the Petitioner's prospective endeavor, nor does she elaborate on how the proposed endeavor may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *See id.* at 889-90.

Next, the letter from the Petitioner's patient is dated October 2022, which we note is after the petition filing date. The letter provides contact information in Massachusetts, it summarizes that the patient met the Petitioner through a referral, specifically an "indication of a friend," and it asserts that the Petitioner's "services" reduced the patient's tendinitis pain and discomfort; however, it does not clarify when the Petitioner provided such services to the patient. The Petitioner's patient asserts that she is "sure that [the Petitioner] will be able to help a lot of people that, just like me, were stuck with pain relievers and saw no improvements in their condition." However, the patient's letter does not elaborate on how the Petitioner's endeavor may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area," nor does it clarify how a patient would have such knowledge. *See id.*

In turn, the letter from [redacted] reiterates the Petitioner's statements in the record regarding her proposed endeavor, it contains unsubstantiated conclusions, and it addresses information that cannot establish eligibility. For example, the letter summarizes unspecified publications from IBISWorld that, according to [redacted] report "over the five years to 2027, industry revenue is forecast to increase at an annualized rate of 2.5 percent to $52.1 billion," leading him to conclude, "In this context, the proposed endeavor has significant potential to employ U.S. workers and has other substantial positive economic effects." However, an unsubstantiated generalization about industrywide revenue trends over the course of five years does not lead to any particular conclusion about the Petitioner, her proposed endeavor, its potential to employ any number of U.S. workers, and the resulting economic effects the particular endeavor will cause. As another example, [redacted] refers to unspecified "studies . . . showing that one in four Americans currently 65 years of age will live to be at least 90 years old," and he concludes that "the proposed endeavor will broadly enhance societal welfare or cultural enrichment" because "[p]hysical therapy can help seniors retain their independence." However, the letter does not address the location(s) where the Petitioner's endeavor will operate, the number of patients for whom the Petitioner anticipates providing physical therapy services, the projected change in their generalized "independence" after receiving the Petitioner's services as

compared to before receiving them, and other details that would support a conclusion that the particular endeavor may have broader implications beyond a limited set of patients within a limited area of operation.

[redacted] letter also references a statement from the White House issued in January 2022 as an example of how the proposed endeavor "impacts a matter that a government entity has described as having national importance or is the subject of national initiatives." However, for the reasons explained above, a White House statement dated 2022 cannot establish eligibility because it is dated after the Petitioner filed the Form I-140 in 2020. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. Although [redacted] letter also references a 2010 Institute of Medicine report on behalf of the National Institute of Health, its recommendation for "a comprehensive population health-level strategy . . . to increase the recognition of pain as a significant public health problem in the United States" does not address the Petitioner, her proposed endeavor, or how it may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar*, 26 I&N Dec. at 889-90. Therefore, the 2010 report is inapposite to whether the Petitioner's endeavor, proposed in 2020, may have national importance. In summation, none of the support letters referenced on appeal establish how the proposed endeavor may have national importance. *See id.*

Next, the Petitioner asserts on appeal that her "[p]rofessional [s]tatement offers details regarding the national significance of her proposed endeavor, confirming [her] critical role in her field of endeavor and her potential to enhance American citizen's health [sic] by contributing to the diminishing of some of the most critical health conditions." She then quotes a portion of her statement that discusses how rehabilitation is healthier than using opioids to manage physical pain and addresses a National Pain Strategy framework established by the National Institute of Health "to 'decrease the prevalence of pain across its continuum from acute to high-impact chronic pain and its associated morbidity and disability across the lifespan.'" However, as discussed 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. Similar to other evidence discussed by the Petitioner, the National Pain Strategy framework does not address the Petitioner or how her particular proposed endeavor may have "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 ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

Based on the Petitioner's description of her proposed endeavor in the record, her endeavor appears to benefit her specific patients; however, the record does not establish how many patients to whom the Petitioner anticipates providing services or even where the Petitioner intends to provide services, beyond a particular town in Massachusetts with a street address of "TBD" and a ZIP code of "N/A." Although we, like the Director, acknowledge the merit of providing physiotherapy, especially "to help special minorities of U.S. citizens such as veterans or even elderly people whose pain is usually undermined and not properly taken care of" as the Petitioner asserts, the record does not establish how the proposed endeavor will have broader implications beyond benefitting the Petitioner's patients, "such as those resulting from certain improved manufacturing processes or medical advances." *See*

id. In turn, although the Petitioner noted, "I am creating my own employment opportunity in the United States," the record does not elaborate on how many other employment opportunities she intends to create, the duties any other potential employees would perform, the wages the Petitioner intends to pay any other such workers, or other information that could establish "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the record does not establish potential broader implications or substantial positive economic effects of the proposed endeavor, it does not establish that the proposed endeavor may have 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 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.