



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

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

In Re: 28457747

Date: SEP. 13, 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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 USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

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 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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.

Initially, the Petitioner claimed that she intended to work as a physical therapist in a health care facility in the United States, in addition to possibly working "to teach new Physical Therapists." She submitted a professional plan describing her proposed endeavor as follows:

My specific endeavor will potentially impact the U.S. in the following ways:

- Fill a position as a physical therapist 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, assistance, and others involved in the diagnosis and recovery process.

Regarding the potential impact of her endeavor, she claimed that her proposed endeavor will positively impact the United States because it will:

- Optimiz[e] the lives of patients that suffer from illnesses and injuries;
- Reduce the amount of time patients spend in the hospital; and
- Increase the quality of life of patients dealing with different illnesses and injuries through personalized treatment, allowing them to participate in the community.
- Improve comfort and health of patients;
- Minimize use and reliance of assistance devices; and
- Increase overall morale immobility of patients through treatment.

The Petitioner also supported the record with an opinion letter, industry articles and reports, and letters of support.

In a request for evidence (RFE), the Director informed the Petitioner that she had not submitted sufficient evidence to demonstrate that her proposed endeavor had substantial merit or national importance. The Director noted the evidence submitted but observed that the record as constituted was insufficient to demonstrate that her proposed endeavor would have broader implications in terms of significant potential to employ U.S. workers or have other substantial positive economic effects. Thus, the Director requested additional evidence that may establish the specific proposed endeavor has substantial merit and national importance, as required.

In response to the Director's RFE, the Petitioner submitted a definitive statement indicating that she intended to develop her own cardiopulmonary rehabilitation services company, [REDACTED]. Specifically, she stated her company "will provide physiotherapy services throughout the US, meeting its high demand, the opening of my at-home cardiorespiratory physical therapy rehabilitation services company services the national interest of the United States."

In support of this assertion, she submitted a copy of the company's business plan, indicating that she will serve as the company's CEO and that it anticipates employing 10 individuals and earning a total revenue of approximately \$1.6 million by its fifth year of operations. The Petitioner also submitted additional letters of recommendation and industry articles and reports in support of her eligibility. Although she initially stated her intent to work as a physical therapist for a U.S. health care facility and possibly teach new physical therapists, her definitive statement made no further mention of these endeavors.

In denying the petition, the Director determined that the Petitioner provided insufficient descriptions and documentary evidence to identify her proposed endeavor with specificity, and therefore had not established the proposed endeavor's substantial merit and national importance. The Director noted that the record contained insufficient evidence to demonstrate that the Petitioner's work would impact the regional or national population at a level consistent with national importance, and further noted that the Petitioner did not demonstrate that the benefits of her proposed U.S. employment would reach beyond her patients to affect her field or the United States more broadly. The Director further concluded that the record did not satisfy the second and third *Dhanasar* prongs, as required. See *Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner asserts that she has established, by a preponderance of the evidence, the substantial merit and national importance of her work, and that the Director's decision was in error because it "applied a stricter standard" of proof. The Petitioner further asserts that the Director erred by not considering the totality of the evidence provided both initially and in response to the RFE, and emphasizes that her nineteen years of experience in the field coupled with the potential positive impacts of her proposed company demonstrate her eligibility for a national interest waiver.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

As noted above, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the substantial merit and national importance of the proposed endeavor described in the initial petition. The Petitioner's new plan in the RFE reply to develop her own rehabilitation services company and serve as its CEO describe a new set of facts regarding the proposed endeavor and were presented after the filing date, and thus cannot retroactively establish eligibility. Accordingly, we find that the Petitioner made an impermissible material change to her proposed endeavor. 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. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that her initial proposed endeavor - working as a physical therapist and possibly providing instruction to physical therapists - has substantial merit and national importance. We conclude it does not.

As initially stated, the Petitioner intends to work as a physical therapist in the United States and possibly teach/train other physical therapists. The Petitioner did not provide a timeline for when she would occupy these roles and it is not apparent whether securing a position in either of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing these roles either simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed endeavor has not been clearly defined. We therefore agree with the Director's determination that the Petitioner did not submit persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish her eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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.

We agree with the Director that the Petitioner has not provided sufficient documentation or explanation concerning how her proposed endeavor has national importance. The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further her own career while only adding ancillary benefits to the nation. Although she has many ideas, it remains unclear as to what specifically her proposed endeavor involves aside from securing a job as a

physical therapist and/or an instructor/trainer. Moreover, we do not know if she intends to perform both the functions she initially described or whether she will perform in only one of the identified positions. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *See id.* at 889. While it may include one or more of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

We note the Petitioner’s submission of generalized publications, reports and articles regarding the field of physical therapy, anticipated industry growth and treatment trends, and the shortage of physical therapists in the industry. The relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.”² *See id.* Furthermore, even if the Petitioner was able to establish a shortage of physical therapists in the United States, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone would not demonstrate that waiving the requirement of a labor certification would benefit the United States. Moreover, none of the documents submitted establish that the benefits of working as a physical therapist or an instructor in a healthcare facility, the proposed endeavor, would extend beyond her patients, employers, and students in a manner that could be considered of national importance.

While the physical therapy profession may have national importance, the Petitioner has not demonstrated that her specific proposal could lead to advances in the field. She provided a letter from the mother of a Brazilian patient, who states that the Petitioner began treating her son, a carrier of cystic fibrosis, shortly after his birth in 2010 and continued to treat him through home visits thereafter. Although she praises the Petitioner’s competence and attentive manner, her letter does not indicate that the Petitioner introduced new procedures or employed novel therapy methods when treating her son. This letter, therefore, while a testament to the Petitioner’s abilities and manner, does not demonstrate that her proposed U.S. endeavor has significant potential to advance the physical therapy field by introducing new procedures or methods of treatment.

The record contains an expert opinion letter from a professor of anatomy at the [redacted] Institute in New York who concludes that the Petitioner’s proposed work has national importance. But the professor does not base his conclusion on the national importance of the Petitioner’s specific endeavor. Although he recites the Petitioner’s career history and accomplishments, and praises her “intimate knowledge of the Brazilian healthcare sector,” his findings stem from the significance of the physical therapy profession in general - particularly in relation to the shortage of U.S. physical therapists. The letter therefore does not establish the national importance of the Petitioner’s specific proposed U.S. work. *See Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that the immigration service may reject or afford less evidentiary weight to an expert opinion that conflicts with other information or “is in any way questionable”).

The Petitioner also submitted numerous support letters from physicians and physical therapists who worked with her in Brazil. None of the authors, however, discuss the Petitioner’s proposed endeavor as initially stated. Instead, her former colleagues primarily focus on the Petitioner’s past work

² The issue here is not the value of physical therapy as an effective means of treatment and pain management, but rather whether the Petitioner’s specific proposed endeavor as a physical therapist rises to the level of national importance.

experience and accomplishments. Although the record contains statements regarding the Petitioner's career in the physical therapy field, and although the letter writers praise the Petitioner's qualifications and commend her work, we have insufficient information concerning the Petitioner's proposed endeavor with which to make a determination concerning its national importance. Again, 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." *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's proposal to fill a vacant physical therapist position at an existing healthcare facility, and possibly teach other physical therapists, appears to benefit the Petitioner's potential employer(s), the patients to whom she may provide care, and other physical therapists who may benefit from her instruction. However, the record does not establish how 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." *Id.* at 889-90. Moreover, the record does not establish how the proposed endeavor of educating other physical therapy 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 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.*

Finally, the Petitioner's reliance throughout the record 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, which pertains to whether the prospective endeavor has both substantial merit and national importance. *See id.* at 888-91.

Because the Petitioner has not shown that she intends to pursue her initial endeavor and because she has not provided sufficient information and documentation regarding her proposed endeavor, she did not demonstrate that the endeavor has substantial merit and national importance, and is therefore 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.