



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

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

In Re: 27440405

Date: AUG. 2, 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 as well as a national interest waiver of the job offer requirement attached to this classification. *See* 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 that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director's decision contains numerous erroneous conclusions of both law and fact.

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.

“Advanced degree” means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

“Profession” means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),<sup>1</sup> as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

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<sup>1</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates that:

- 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 Petitioner proposed to work in the United States as a physical therapist. She holds a bachelor’s degree in physical therapy from Centro Universitario [REDACTED]. She worked as a physical therapist and a laser therapist at [REDACTED] a company that leases dermatological equipment, from 2012 to 2019. She worked as a functional dermatology physical therapist and an orthopedics physical therapist at [REDACTED] Physical Therapy and Pilates, a clinic that provides physical therapy services, from 2015 to 2019. The Director determined that the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree based on her combined education and work experience, and we agree.

The remaining issue on appeal is whether the Petitioner is eligible or otherwise merits a waiver of that classification’s job offer requirement. We conclude that she is not.

The Petitioner proposed to work in the United States as a physical therapist. In functional dermatology, the Petitioner indicated that she will work on the prevention, promotion, and recovery of the integumentary system (skin); she will work with a multidisciplinary team; she will use thermal, electrical, mechanical, and phototherapeutic therapy; she will treat patients with metabolic disorders, patients with lymphatic disorders caused by surgery or illness, and post-surgical patients; and she will use laser techniques to improve patients’ integumentary system for sunspots, scars, or tattoos removal treatment.<sup>3</sup> In orthopedics, the Petitioner indicated that she will work on preventing and treating problems in bones, tendons, muscles, joints, and ligaments; she will apply physiotherapeutic treatments to recover patients’ daily functions; she will work with post-fracture surgery patients, patients with spinal problems, and elderly patients; she will use kinesiotherapy (exercise that can reach various muscle groups), electrothermophotherapy (techniques for lower back laser), and manual therapy (mobilization techniques).<sup>4</sup>

The Director determined that the evidence demonstrated the Petitioner’s proposed endeavor has substantial merit. However, the Director determined that the evidence did not establish that the

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<sup>2</sup> 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).

<sup>3</sup> See the Petitioner’s professional plan, dated August 2022.

<sup>4</sup> See *id.*

proposed endeavor has national importance, that the Petitioner is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to waive the requirements of a job offer and thus of a labor certification.

At the time of filing her petition, the Petitioner submitted her professional plan; resume; an expert opinion letter from a professor; an industry report about physical therapists; articles about a national shortage of physical therapists, a model to project the supply and demand of physical therapists, physical therapy burnout, and the benefits of rural physical therapists; an evaluation of education and work experience; a diploma and a transcript; letters from her former employers; evidence of registration as a physical therapist with the Regional Council of Physical Therapy and Occupational Therapy of the [redacted] in Brazil; a letter from her accountant; evidence of registration with the Association of Physical Therapists of Brazil; certificates of various training and courses; letters confirming her participation in various conferences or events; a printout from the website of her former employer; and a letter from a magazine coordinator confirming the publication of the Petitioner's scientific article about manual lymphatic drainage in a university magazine. In response to a request for evidence, the Petitioner submitted her updated professional plan and reference letters from her colleagues who are physiotherapists. On appeal, the Petitioner does not submit new evidence to address the deficiencies noted in the Director's decision. While we may not address each piece of evidence individually, we have reviewed and considered each one.

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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. *Id.* For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify. *Id.*

On appeal, the Petitioner contends that the Director denied the proposed endeavor's substantial merit without providing any explanation as to why it was denied. However, the Director clearly stated on page 3 of her decision that the evidence demonstrated the proposed endeavor has substantial merit. We agree with the Director that the Petitioner's proposed endeavor to work in the United States as a physical therapist in order to prevent, promote, and recover the integumentary system and prevent and treat problems in bones, tendons, muscles, joints, and ligaments has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances. *Id.* We look for broader implications. *Id.* An 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.

The Petitioner contends that USCIS may consider information about petitioners' current or prospective positions to illustrate the capacity in which they intend to work in order to determine whether the proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework. The Petitioner then provides her employment history from 2012 to 2019, indicating that she worked for a company and a clinic as a physical therapist and describing her job responsibilities with her former

employers. While we acknowledge the Petitioner's work experience as a physical therapist, these duties do not illustrate how her proposed endeavor to work in the United States as a physical therapist will have broader implications within the physical therapy industry or the healthcare industry. In addition, the Petitioner's employment history as a physical therapist may support that she is well positioned to advance the proposed endeavor under the second prong of the *Dhanasar* framework, but it does not support that her proposed endeavor is of national importance.

In support of her request for a national interest waiver, the Petitioner submitted an expert opinion letter from [redacted] a professor of anatomy, physiology, and microbiology of the nursing department at the [redacted] Institute. [redacted] asserts that the Petitioner's proposed endeavor has both substantial merit and national importance in the healthcare industry because physical therapists play vital roles in today's health care environment and are essential providers of rehabilitation, performance enhancement, and prevention and risk reduction services and because physical therapists play important roles both in developing standards for physical therapy practice and in developing health care policy to ensure availability, accessibility, and optimal provision of physical therapy. [redacted] adds that IBIS World reports industry revenue is forecast to grow at annualized rate of 2.6% to \$37.6 billion over the next years to 2025.

Regarding the expert opinion letter from [redacted] USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nevertheless, USCIS is responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *See id.*

While we recognize the important roles physical therapists play in the healthcare industry as essential providers of rehabilitation, performance enhancement, and prevention and risk reduction services, 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. The Petitioner must demonstrate by a preponderance of the evidence that the specific endeavor that she proposed to undertake - providing physical therapy services in the areas of functional dermatology and orthopedics - is of national importance. Here, the Petitioner has not provided sufficient documentary evidence that her proposed endeavor would impact the physical therapy industry or the healthcare industry more broadly rather than benefiting her patients. Without sufficient documentary evidence of their broader impact, the Petitioner's proposed employment does not meet the national importance element of the first prong of the *Dhanasar* framework.

The Petitioner also contends that her work has palpable broader implications because its results are widely disseminated to other professionals in the physical therapy industry. The Petitioner claims that the broader implications of her proposed work are demonstrated by several letters submitted.

The record includes three reference letters from the Petitioner's colleagues. [redacted] a physiotherapist, states that she referred some of her patients who were not showing improvement in their scars to the Petitioner and the Petitioner was able to extinguish all the scars and a tattoo on the patients using laser procedures and other manual methods. [redacted] recommends the Petitioner as a professional specialized in laser treatments and who is technical, proactive, and accurate in the

execution of her procedures. [redacted] a physiotherapist, praises the Petitioner as an excellent professional in the dermatology functional area. [redacted] states that the Petitioner treated a patient with swollen legs due to lymphatic filariasis (a chronic parasite disease) using lymphatic drainage techniques with exercises, pain relief methods, and limb bandaging and that the patient's condition was significantly improved within a few days. [redacted] adds that she also observed that the Petitioner successfully treated post-surgical patients with scars and edemas using massages and lasers. [redacted] further states that the excellence of the Petitioner's work encouraged her to seek constant learning about those methods and that the Petitioner stimulates other colleagues in the area to improve themselves. [redacted] a physiotherapist, acknowledges the Petitioner's unique skills in orthopedics and states that the Petitioner's work is performed in a brilliant, technical, integral, honest, and humanized way. [redacted] further states that she referred some of her orthopedic patients to the Petitioner and the Petitioner successfully treated the patients with a multidisciplinary strategy, including exercises for fall prevention, lasers for healing, and innovative techniques.

While these reference letters discuss the Petitioner's skills, techniques, a multidisciplinary strategy, and past achievements in the field, these letters do not provide specific examples of how the Petitioner's work has influenced the physical therapy industry or would advance the interests of the physical therapy industry or the U.S. healthcare industry beyond her patients she would treat. In addition, we acknowledge that the Petitioner stimulates other colleagues in the area to improve themselves, but these letters do not explain how the results of the Petitioner's work will be disseminated to other professionals in the physical therapy industry.

The Petitioner asserted that as a physical therapist, she will help meet the demand and ameliorate the shortage of healthcare professionals in the country, provide highly skilled services to physical therapy practices, provide lectures to other professionals in the field, participate and lead innovative projects, and improve the overall health of U.S. citizens.<sup>5</sup> The Petitioner further asserted that these contributions will improve the country's supply of skilled healthcare professionals, boost the U.S. economy, and generate American jobs.<sup>6</sup> The Petitioner added that she will disseminate her knowledge to other professionals in the field and that her distribution of knowledge will benefit the expansion and growth of healthcare knowledge in the United States and will expand the skillset of other professionals in the field, creating a chain of development that has broad implications at a regional and national level.<sup>7</sup>

The U.S. Department of Labor addresses worker shortages through the labor certification process. Therefore, a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See Dhanasar*, 26 I&N Dec. at 885.

With regard to the Petitioner's assertion that she plans to provide lectures to other professionals in the field and disseminate her knowledge to other professionals in the field, the record does not sufficiently show that this undertaking has broader implications for her field, as opposed to being limited to those who participate in her lectures or training sessions. While the Petitioner's plans to provide lectures or

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<sup>5</sup> See the Petitioner's professional plan, dated May 2021.

<sup>6</sup> See *id.*

<sup>7</sup> See the Petitioner's professional plan, dated August 2022.

disseminate her knowledge to other professionals in the field have merit, the record does not sufficiently demonstrate that her instructional activities offer benefits that extend beyond her students or trainees to impact the physical therapy industry or the healthcare industry more broadly. Likewise, 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. *Dhanasar*, 26 I&N Dec. at 893.

As for the economic value and job creation that the Petitioner asserts her physical therapy services will offer, we acknowledge the Petitioner's claims. However, she has not offered sufficient evidence to establish that her physical therapy services will enable her employer to employ a significant population of workers in an economically depressed area or that her endeavor would offer a particular U.S. region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increase in her employer's revenue as a result of her provision of physical therapy services stands to substantially affect economic activity regionally or nationally. The Petitioner has not otherwise provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance. Accordingly, the record does not sufficiently demonstrate that the Petitioner's proposed endeavor is of national importance.

Because the documentation in the record does not establish by a preponderance of the evidence 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. Therefore, further analysis of her eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose. We will reserve these issues for future consideration should the need arise.<sup>8</sup>

### III. CONCLUSION

Although the Petitioner has shown that she is a member of the professions holding an advanced degree and that her proposed endeavor to work in the United States as a physical therapist has substantial merit, she has not shown by a preponderance of the evidence that her proposed endeavor is of national importance. Accordingly, the Petitioner has not established by a preponderance of the evidence that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

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<sup>8</sup> 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 alternate issues on appeal where an applicant is otherwise ineligible).