U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26982364

Date: JUN. 8, 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 under the second-preference, immigrant visa category as a member of the professions holding an advanced degree and requests a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), (B)(i), 8 U.S.C. § 1153(b)(2)(A), (B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse the job-offer requirement - and thus the related need for certification from the U.S. Department of Labor (DOL) - if a noncitizen demonstrates that their permanent employment in the United States would be in the "national interest." Section 203(b)(2)(B)(i) of the Act.

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate her qualifications for the requested immigrant visa category or that her U.S. employment would be in the national interest. The Director also found that the Petitioner willfully misrepresented her intent to work in the United States as a physical therapist. On appeal, the Petitioner contends that the Director undervalued her evidence.

The Petitioner bears the burden of proving eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support the Director's willful misrepresentation finding and that the Petitioner demonstrated the "substantial merit" of her proposed endeavor. We agree with the Director, however, that the Petitioner has not established her proposal's claimed "national importance." We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must demonstrate their qualifications for the underlying immigrant visa category, either as an advanced degree professional or a noncitizen of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. The category generally requires a prospective U.S. employer to seek a noncitizen's services and obtain DOL certification to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, a petitioner must demonstrate

that waiving these U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." But we have established a framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavor; and
- On balance, a waiver of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

The record shows that the Petitioner, a native and citizen of Brazil, has a bachelor's degree in physiotherapy and more than five years of experience as a physiotherapist in her home country. She states that she wants to permanently work as a physical therapist in the United States and to eventually establish her own physical therapy clinic in this country.

A. Willful Misrepresentation of a Material Fact

A willful misrepresentation of a material fact justifies a petition's denial. USCIS can only approve a filing if "the facts stated in the petition are true." Section 204(b) of the Act, 8 U.S.C. § 1154(b). Thus, USCIS must deny a petition containing a false, material fact. A fact is "material" when it has a "natural tendency to affect[] the official decision" of an adjudicator, or "tends to shut off a line of inquiry . . . that would predictably have disclosed other [relevant] facts." *Matter of Mensah*, 28 I&N Dec. 288, 293-94 (BIA 2021) (citations omitted). Also, a noncitizen's willful misrepresentation of a material fact in a petition renders them inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act.

On the Form I-140, Immigrant Petition for Alien Workers, and in accompanying statements, the Petitioner indicated her intent to permanently work in the United States as a physical therapist. The Director, however, found that she willfully misrepresented this material fact. Citing a DOL publication, the Director noted that physical therapists entering the occupation in the United States need doctoral degrees in physical therapy and that all U.S. states require physical therapists to obtain licenses to practice. U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, Physical Therapists, "How to Become a Physical Therapist," www.bls.gov/ooh/healthcare/physical-therapists.htm. The Director found that the record demonstrated the Petitioner's possession of neither a doctoral degree nor a state license in physical therapy. Also, the Petitioner submitted a copy of her unrelated state license in cosmetology. The Director therefore concluded that she intends to work in the United States, not as a physical therapist, but as a cosmetologist.

The record does not sufficiently support the Director's misrepresentation finding. The Petitioner cited her cosmetology license as evidence of her entrepreneurial skills to support the credibility of her goal of opening a U.S. physical therapy clinic. Contrary to the Director's finding, the license does not sufficiently indicate her intent to permanently work in the United States as a cosmetologist rather than as a physical therapist.

Also, a determination of the Petitioner's qualifications to work as a physical therapist in the United States depends on a variety of factors, including whether her foreign coursework substantially equates to a U.S. first professional degree in physical therapy at the time of her graduation. *See* The Federation of State Boards of Physical Therapy, "Foreign Educated Physical Therapists," www.fsbpt.org/Free-Resources/Foreign-Educated-PTs-and-PT-Assistants/Education-Credentials-Review. Thus, even without a U.S. doctoral degree, a noncitizen may qualify to apply for a state license and work in the United States as a physical therapist.

For the foregoing reasons, the record does not sufficiently support the Petitioner's alleged willful misrepresentation of her intent to work in the United States as physical therapist. We will therefore withdraw the finding.

B. Substantial Merit

A petitioner may demonstrate the substantial merit of their proposed U.S. employment by showing the work's "potential to create a significant economic impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. But "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 Director found that the Petitioner did not sufficiently explain "what [she] intends to do as a physical therapist." The Director therefore concluded that the Petitioner did not demonstrate the claimed merit of her proposed work.

With the initial filing and in response to the Director's later request for additional evidence, the Petitioner submitted written "professional plans and statements." In both documents, she stated her intent to work as a physical therapist in the United States and described her proposed duties. She wrote:

> 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. I would also like to open a clinic here in the U.S., where I can continue working, as I did in Brazil, with orthopedic, trauma, and athletic patients. My experience will allow for even more highly skilled physical therapists to enter the healthcare field in the U.S., which will curb the shortage [of physical therapists], increase revenue, benefit the economy, and enhance overall patient health.

The Petitioner's statements are sufficiently detailed to consider the merit of her proposed U.S. employment. DOL has determined that the United States lacks sufficient able, willing, qualified, and available physical therapists. 20 C.F.R. § 656.5(a)(1). The record indicates that the Petitioner's

endeavor could help alleviate this shortage, improve the health of U.S. residents, and have positive economic effects. Thus, the record demonstrates the substantial merit of the Petitioner's proposed endeavor. We will therefore withdraw the Director's contrary finding.

C. National Importance

When assessing the national importance of proposed U.S. work, USCIS does not consider the significance of a petitioner's field, industry, or profession. Rather, the Agency focuses on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889.

USCIS considers an endeavor's "potential prospective impact." *Id.* "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.*

Also, USCIS does not focus on a proposal's geographical scope. *Matter of Dhanasar*, 26 I&N Dec. at 890. "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.*

The Director found 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. On appeal, the Petitioner contends that her proposed endeavor:

> is national in scope, as her professional activities relate to a matter of national importance and impact, particularly because they generate substantial ripple effects upon key commercial and business activities on behalf of the United States - namely, serving the business development and business functions of U.S. companies.

The Petitioner also states that her endeavor "presents significant benefits to the United States, particularly traced to the country's dire shortage of industry professionals, the rising nature of hospital readmission rates, and the current opioid crisis."

As previously indicated, however, when assessing national importance, USCIS must focus on "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner contends that her work would "generate substantial ripple effects upon key commercial and business activities on behalf of the United States." But the record lacks evidence that her specific endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* The record indicates that the Petitioner would initially work for an established employer before opening her own clinic. But she has not explained how her employment by an established clinic would provide substantial economic benefits to the United States or an economically depressed U.S. region. She also has not provided any evidence regarding how many people her proposed clinic would employ or its projected revenues. Thus, the record also does not establish that her proposed clinic has significant potential to provide economic benefits to the United States or an economically depressed U.S. region.

Also, 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 a Brazilian physiotherapist explaining how the Petitioner's advice helped the physiotherapist successfully treat a patient with a broken shinbone. The physiotherapist stated that the Petitioner "was essential to the recovery of this patient, and her advice proved to be a unique methodology that is now widely accepted as the standard." The Petitioner, however, has not indicated that she would introduce this methodology or others to the United States. The record therefore does not demonstrate that her proposed U.S. endeavor has significant potential to advance the physical therapy field.

The record also contains an expert opinion letter from a U.S. professor of anatomy and physiology, concluding that the Petitioner's proposed work has national importance. But the professor does not base that conclusion on the national importance of the Petitioner's specific endeavor. Rather, his finding stems from the significance of the physical therapy profession - particularly in relation to the rapidly aging U.S. population. 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").

As the Director noted, we found in *Dhanasar* that a proposal to teach U.S. students in science, technology, engineering, and math ("STEM") disciplines lacked national importance. *Matter of Dhanasar*, 26 I&N Dec. at 893. We acknowledged that the field of STEM teaching has substantial merit. *Id.* But we found insufficient evidence that the specific, proposed activities would broadly affect STEM education. *Id.* The Petitioner's proposed endeavor is similar. The physical therapy profession has substantial merit. But, without evidence of broader implications for the country or the physical therapy field, the record does not establish that the Petitioner's specific proposal rises to the level of national importance. We will therefore affirm the petition's denial.

Our affirmance resolves the appeal. As the Petitioner has not demonstrated the national importance of her proposed U.S. employment, we need not consider the Director's other conclusions. Rather, we will reserve consideration of the other findings unless and until needed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.")

III. CONCLUSION

The record does not support the Petitioner's alleged willful misrepresentation of her intent to work as a physical therapist in the United States, and she demonstrated that her proposed endeavor has substantial merit. Evidence, however, does not sufficiently establish the claimed national importance of her proposed work.

ORDER: The appeal is dismissed.