U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28793437

Date: NOV. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an exercise trainer, group fitness instructor, and entrepreneur, 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). 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. The Director concluded that the record did not demonstrate the Petitioner merits a discretionary waiver of the job offer requirement 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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

[1] 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.

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 USCIS may, as matter of discretion[2], 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 proposes to work in the United States as an exercise trainer and group fitness instructor for her new fitness center business.

### A. Member of Professions Holding an Advanced Degree

The Director found that the Petitioner was eligible for the underlying EB-2 immigrant classification as a member of the professions holding an advanced degree. Upon de novo review, we find that the record does not establish the Petitioner's eligibility for the underlying EB-2 classification.

The Petitioner submitted evidence to qualify as a member of the professions holding an advanced degree. To qualify as a member of the professions, an individual must meet "one of the occupations listed in section 10l(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. 204.5(k)(2).[3] The record does not establish that the Petitioner's occupation as an exercise trainer and group fitness instructor, requires the minimum of a U.S. bachelor's degree or its foreign equivalent for entry into the occupation.

The Petitioner maintains that her prospective exercise trainer and group fitness instructor comports with the duties and responsibilities of those employed in the "Exercise Trainers and Group Fitness Instructors" SOC Code 39-9031 occupation. The U.S. Department of Labor states that the education requirements for this occupation are "training in vocational schools, related on-the-job experience, or an associate's degree." See U.S. Department of Labor, O*NET Summary Report for "Exercise Trainers and Group Fitness Instructors," https://www.onetonline.org/link/summary/39-9031.00. Since a U.S. bachelor's degree or its foreign equivalent is not the minimum requirement for entry into the Petitioner's intended occupation of exercise trainer and group fitness instructor, she has not established that she qualifies as a member of the professions. 8 C.F.R. 204.5(k)(2).

Additionally, the record does not establish that the Petitioner has at least a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner earned a license for completing the course of physical education from Universidade [redacted] in Brazil in 2015. She also completed the personalized training course – knowledge field for health and social well-being "lato sensu" graduate program from Universidade [redacted] in Brazil in 2019. The Petitioner submitted copies of her

[2] 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).

[3] Section 101 (a)(32) of the Act states "[t]he term 'profession' shall include but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

license certificate, her graduate course certificate, academic transcripts from Universidade [redacted][4], work experience letters, and an academic evaluation from Morningside Evaluations dated April 4, 2022. The academic evaluation states that having reviewed the Petitioner's license certificate, graduate certificate, and academic transcripts, "[the Petitioner] has attained the equivalent of a Bachelor of Science degree in Physical Education from an accredited institution of higher education in the United States." (emphasis omitted).

The plain language of the regulations indicates that an advanced degree equivalency must include a single bachelor's degree, without substituting experience for education or combining lesser educational credentials. The regulations require five years of progressive experience to follow "[a] United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(2).[5] Here, the evaluation combining the Petitioner's educational credentials, her license for physical education and her graduate program certificate, does not qualify under the regulations as demonstrating the foreign equivalent of a single U.S. bachelor's degree.

Since the record does not show that the Petitioner qualifies as a member of the professions or that she holds a U.S. baccalaureate degree or foreign equivalent degree, the Petitioner has not established that she is eligible to be classified as a member of the professions possessing an advanced degree. Therefore, we withdraw the Director's findings that the Petitioner is eligible for the underlying EB-2 immigrant classification.

B. National Interest Waiver

The Director determined that the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner established she is well positioned to advance the proposed endeavor under the second prong of Dhanasar[6]; however, she did not show that on balance, waiving the job offer requirement would benefit the United States under the third prong of Dhanasar. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver

[4] The record includes the Petitioner's degree indicating she earned her license for physical education from Universidade [redacted] However, the record does not include academic transcripts from Universidade [redacted] Instead, the record includes academic transcripts from a different school, Universidade [redacted] indicating coursework towards her license for physical education. The record does not explain the reason that the academic transcripts for her license for physical education are from Universidade [redacted], instead of from Universidade [redacted]

[5] When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that "the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree." Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 and found the proposed regulations consistent with Congressional intent. The INS stated, "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an *alien must have at least a bachelor's degree*." INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). Thus, an advanced degree professional must have at least a U.S. bachelor's degree or a single foreign degree equivalent.

[6] The Director did not provide reasoning or analysis for the finding under the second prong of the Dhanasar framework.

of the labor certification would be in the national interest.[7]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a fitness center business for which she would be it chief executive officer, an exercise trainer, and a group fitness instructor. The business plan states that the business would be owned by the Petitioner and two other individuals with its main office in [redacted] Florida and future offices in other Florida cities. The business would "bring to the United States a new weight loss method, created by [the Petitioner]" by using "Neuro Linguistic Programming techniques, of which [the Petitioner] is a [p]ractitioner, combined with knowledge acquired throughout her professional journey." The business would be a fitness center where clients receive diet and exercise advice, including group and private programs for personal training, diet attendance, and obesity fighting. The business plan states that "obesity is a major public health problem nationwide" and that the business would "improve the population's quality of life and well-being." We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that her proposed endeavor "will offer benefits that extend beyond her clients to impact the field of business or the U.S. economy more broadly." Therefore, the Director found that the Petitioner did not meet her burden in meeting the national importance element of the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erroneously applying the law. She argues the Director did not give "due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; her business plan describing her professional credentials and accomplishments, and the business' potential benefits; letters of recommendation attesting to her work in the field; and industry reports and articles showing the national importance of the proposed endeavor and the shortage of professionals in the field. Upon de novo review, we find the Petitioner did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here,

[7] While we may not discuss every document submitted, we have reviewed and considered each one.

the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

On appeal, the Petitioner argues that her proposed endeavor has national importance and impact, particularly because it will "generate substantial ripple effects upon key health and wellness activities on behalf of the United States" and would be "a vital aspect of U.S. exercise and fitness operations and productivity, [sic] which contributes to a revenue-enhanced business ecosystem, and an enriched, productivity-centered economy." (emphasis omitted). The Petitioner stresses her more than 16 years "of progressive experience and acumen in the exercise and fitness fields" and her educational credentials to argue that her "work offers broad implications to the United States' exercise and fitness industries, specifically through her endeavors within key commercial segments." (emphasis omitted). She relies on her background to emphasize that she "has brought numerous advantages to the organizations that she has served . . ." by stimulating "her served companies' economic capacities" and prioritizing "customer satisfaction by ensuring all clients are aligned with their actual needs, furthering customer loyalty." The Petitioner argues the United States "would benefit from investing in well-versed exercise and fitness professionals such as [the Petitioner], who are knowledgeable regarding potentially profitable markets for U.S. organizations in regions that are economically and politically strategic, yet extremely complex." (emphasis omitted). She contends her "proposed endeavor will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape." The Petitioner asserts her "proposed endeavor is clearly of national importance, when considering how much a professional with her caliber can contribute to the national interests, and to the U.S. economy, regardless of a labor certification." (emphasis in original).

However, the Petitioner's reliance on her academic credentials, professional experience, and achievements to establish the national importance of her proposed endeavor is misplaced. Her academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. See id. at 889.

With the petition, the Petitioner submitted her statement and a business plan contending her proposed endeavor has national importance based on potential economic and health benefits. The business plan generally states that the business will help with weight loss and obesity through the Petitioner's new proposed method, "The proposed method was developed over the years to work on people's behavioral change, making them understand that when we talk about weight loss, health and well-being, a change of mind set is necessary." However, the business plan does not sufficiently explain or detail her "new proposed method" or how her use of "Neuro Linguistic Programming techniques" provides new or innovative methods with the potential to impact the fitness and exercise industry. Also, the record does not include evidence corroborating the Petitioner's claims that her new methods would have economic and health benefits.

The Petitioner also claims that her proposed endeavor would create jobs for U.S. workers in underserved areas and generate taxes for the United States and local communities. The business plan

states that it proposes to establish the business in an underutilized business area of [redacted] Florida with future offices in other underutilized areas of Florida. However, the Petitioner has not provided corroborating evidence to support her claims that her business' activities stand to provide substantial economic benefits to the United States and underserved areas of Florida. The business plan projects that in five years the business will hire 19 employees, generate revenue of over $3.7 million, and pay over $1.3 million in wages and $75,305 in federal income taxes. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.

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. The record does not demonstrate that the Petitioner's proposed endeavor will substantially benefit the field of exercise and fitness, as contemplated by Dhanasar: "[a]n 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. The evidence does not suggest that the Petitioner's business would impact the exercise and fitness field more broadly.

The record does not sufficiently document the potential prospective impact, including the asserted economic and health benefits to the United States. The Petitioner has not provided corroborating evidence to support her claims that her business' future staffing levels and business activities stand to provide substantial economic and health benefits to the United States or Florida. The Petitioner's claims that her fitness center business will benefit the U.S. economy and enhance the societal welfare has not been established through independent and objective evidence. The Petitioner's statements are not sufficient to demonstrate her endeavor has the potential to provide economic and health benefits to the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

The Petitioner expresses her desire to improve the physical and mental quality of life for her clients by using her weight loss methods, and to contribute economically to the United States and an underutilized business area of [redacted] Florida. However, she has not established with specific, probative evidence that her endeavor will have broader implications in her field, will have significant potential to employ U.S. workers, or will have other substantial positive economic and societal effects to Florida or the United States. Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 19 jobs; generating revenue of over $3.7 million; and paying over $1.3 million in wages and $75,305 in federal income taxes over a five-year period rises to the level of national importance. Also, without sufficient documentary evidence that her proposed job duties as the chief executive officer, exercise trainer, and group fitness instructor for her business would impact the exercise and fitness industry more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. The reports and articles relate to the economic benefits of immigrants and entrepreneurship; expected increase in demand for personal trainers; importance of athletic trainers at high schools; expected expansion of gym, health, and fitness clubs in the United

States; expected growth of careers in sports; expected growth of health stores in the United States; adult obesity facts; and the economic and health benefits of physically active populations. We recognize the importance of the exercise and fitness industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the exercise and fitness field or starting a fitness center business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889.

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. The industry reports and articles submitted do not discuss any projected U.S. economic impact, job creation, or health benefits specifically attributable to the Petitioner's proposed endeavor.

To further support the national importance of her proposed endeavor, the record includes an opinion from [redacted] associate professor and graduate program coordinator for sport management and policy at University [redacted], Georgia. However, the opinion focuses on the economic and societal benefits of the physical education industry, instead of focusing on the Petitioner's specific proposed endeavor and it having a prospective impact on the exercise and fitness field. The opinion also explains the Petitioner's professional experience to show that she is well positioned "to support the continued growth and advancement of Physical Education in the United States" and that she is capable to "inspire new advances in the field of Physical Education and will continue to challenge and expand the boundaries of research in the field." Although the opinion recognizes the Petitioner's professional credentials and experience, it does not evaluate the prospective impact of her proposed endeavor. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988); see also Matter of D-R, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Generally stating that the Petitioner's work in physical education would support an important industry and could inspire advances in the field is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy or society more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the chief executive officer, an exercise trainer and a group fitness instructor for her new fitness center and weight loss business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for his field. The economic and societal benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed business' fitness work and the claimed economic and health results for the United States.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, she

has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under the second and third prongs. 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

We withdraw the Director's finding that the Petitioner has established that she qualifies for the second-preference employment visa as a member of the professions holding an advanced degree. In addition, since she has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.