



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

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

In Re: 28467314

Date: OCT. 10, 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that 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.

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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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>1</sup>, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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<sup>1</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).

- 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 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 a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to her proposed endeavor, the Petitioner indicated that she intends to operate a company that provides “physical therapy needed to recover from surgery, injury, stroke, chemotherapy, bone marrow transplants, or chronic conditions.” She asserted that her company, [REDACTED] will also offer “respiratory physical therapy techniques for the pulmonary rehabilitation of patients with pre-existing respiratory diseases, pre- and post-operative pulmonary, post-hospital conditions that lead to disabling respiratory complications (including post COVID-19 patients) improving the quality of life of these patients.” The Petitioner further stated that she plans to “work in the [REDACTED] management at the beginning of operations. In the meantime, she will obtain all the necessary licenses and authorizations to exercise her profession in the United States, and then she will also start working directly in operation (attending the customers).”

In addition to company formation documents, the Petitioner submitted her business plan for [REDACTED] [REDACTED] This business plan includes industry and market analyses, information about her company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner’s work experience, and a description of company personnel. Regarding future staffing, the Petitioner’s business plan anticipates that her company will employ 8 personnel in year one, 18 in year two, 28 in year three, 36 in year four, and 44 in year five, but she did not elaborate on these projections or provide evidence supporting the need for these additional employees. In addition, while her plan offers revenue projections of \$551,250 in year one, \$1,311,750 in year two, \$2,094,525 in year three, \$2,764,910 in year four, and \$3,490,213 in year five, she did not adequately explain how these sales forecasts were calculated.

The record includes information about physical therapists in the United States, digital physical therapy during the COVID-19 pandemic, the skilled labor shortage affecting both developed and developing economies, and the Obama Administration’s “Startup America” initiative promoting entrepreneurship. In addition, the Petitioner provided articles discussing the costs of neurological diseases in the United States, long COVID or post-COVID conditions, and the public health implications of stroke in the United States. The record therefore supports the Director’s determination that the Petitioner’s proposed endeavor has substantial merit.

Furthermore, the Petitioner provided letters of support from B-B-, R-B-, B-O-, C-A-, A-C, C-G-, G-D-, R-A-, L-G-, and P-F- discussing her physiotherapy capabilities and experience. The Petitioner’s skills, knowledge, and prior work in her field, however, relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.

The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also submitted an "Expert Opinion Letter" from J-F-, professor at the [REDACTED] in support of her national interest waiver. J-F- contended that the Petitioner's proposed work is of national importance because her generic occupation of physical therapist and the industry in which she works stand to contribute to our nation's healthcare system. For example, J-F- stated: "Physical therapists are crucial service providers for prevention and risk-reduction, performance improvement, and rehabilitation and habilitation in today's health care system. . . . Physical therapy is helping seniors continue to live their lives to the fullest despite the fact that aging has long term detrimental effects on their health." The issue here, however, is not the national 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." *Id.* at 889. The letter from J-F- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work as a physical therapy clinic operator offers broader implications in her field, U.S. public health benefits, or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of her proposed endeavor. The Director stated that the Petitioner had not demonstrated that her undertaking stands to have broader implications in the field, significant potential to employ U.S. workers, or other substantial positive economic effects.

In her appeal brief, the Petitioner asserts that her proposed endeavor has national importance because the United States is experiencing "physical therapy shortages." We are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of professionals in her field. Here, the Petitioner has not established that her proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner further argues that her proposed endeavor provides "value to the community through services, community outreach, and by creating well-paying jobs." She contends that her undertaking "will enhance and improve physical therapy needed to recover from surgery, injury, stroke, chemotherapy, bone marrow transplants, or chronic conditions." In addition, the Petitioner states that her proposed work offers "training and consulting on respiratory physical therapy techniques, for the pulmonary rehabilitation of patients with pre-existing respiratory diseases, pre- and post-operative pulmonary, post-hospital conditions that lead to disabling respiratory complications, particularly post-COVID-19 patients, improving the quality of life of these patients." She also contends that her undertaking "will positively impact the economy, generating taxes, creating jobs, and recruiting and training professionals."

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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s statements reflect her intention to provide training for her staff, and physical therapy services and Pilates sessions for her company’s clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. 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. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her company and its trainees or clientele to impact her field, the physical therapy industry, U.S. public health, or our country’s economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not demonstrated that her company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that her company has growth potential, she has not presented evidence indicating that the benefits to the regional or national economy resulting from her undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner has asserted that her endeavor “has significant potential to employ U.S. workers,” she has not offered sufficient evidence that the area where her company will operate is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity.

For the aforementioned reasons, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish 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. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*. 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 she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.