



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

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

In Re: 28582424

Date: SEP. 29, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physical therapist and entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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. Section 203(b)(2)(B)(i) of the Act. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner's endeavor would have national importance, that he is well-positioned to advance that endeavor, or that, on balance, it would be beneficial to the United States to waive the job offer requirement. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to work as a physical therapist in the United States and to open a home health care company.¹ The Director found that the Petitioner qualifies as an EB-2 advanced degree professional but does not meet any of the prongs of the *Dhanasar* test. On appeal, the Petitioner provides a brief asserting that the Director did not properly consider the evidence provided. Upon review, the Petitioner has not overcome the grounds of the Director's denial.

The first prong of the *Dhanasar* test is concerned with whether the Petitioner's endeavor has both substantial merit and national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. An endeavor may have national importance if, for example, it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* In this instance, the Director concluded that while physical therapy is an occupation with substantial merit, the evidence did not establish that the Petitioner's endeavor would have an impact rising to the level of national importance.

On appeal, the Petitioner emphasizes the importance of physical therapy as a field and the need for more physical therapists in the United States. However, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or profession where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.*; see generally 6 *USCIS Policy Manual* F.5(D)(1), <https://www.uscis.gov/policymanual>. The Petitioner's business plan indicates that his home health care company will employ 15 physical therapists, including himself, by its fifth year of operation. However, as noted by the Petitioner, the United States does not have a shortage of physical therapy positions, but of physical therapists to fill them. There is no indication in the petition of how the Petitioner's employment as a physical therapist and his creation of new physical therapy jobs would impact this shortage on a national level.

Furthermore, the Department of Labor (DOL) has addressed the shortage of physical therapists by designating physical therapy as a Schedule A occupation, indicating that there are insufficient U.S. workers able, willing, qualified, and available for physical therapist positions. 20 C.F.R. §§ 656.5, 656.25. See generally 6 *USCIS Policy Manual*, *supra* at E.7(C). Schedule A designation exempts petitioning employers of physical therapists from the requirement of testing the labor market and applying for a permanent labor certification with DOL. 20 C.F.R. § 656.25. However, this is not a waiver of the job offer requirement and does not support a finding that working in the field of physical therapy inherently has national importance in the context of a national interest waiver.

On appeal, the Petitioner states that his endeavor "is set to impact the physical therapy industry" because of the level of revenues projected in its business plan. However, he does not explain how these projected revenues would impact the physical therapy industry on a nationally important level. According to the business plan, revenues in the physical therapy industry are projected to grow to \$52.1 billion by 2028. It is not apparent how the endeavor's projected revenues would constitute an impact on the field. Furthermore, the Petitioner does not provide a basis or supporting evidence for

¹ The record does not specify how he plans to divide his time between working as a physical therapist and operating a business.

the business plan's projections of the company's expenses or sales or explain its assumption that revenue will be generated through the provision of speech therapy services without a speech therapist being hired. To establish eligibility by a preponderance of the evidence, the Petitioner must provide relevant, probative, and credible evidence establishing that his claims are "probably true." *Matter of Chawathe*, 25 I&N Dec. at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). He has not done so here.²

The record also does not support a finding that the endeavor will have a nationally important economic impact. An endeavor may have such an impact if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Matter of Dhanasar*, 26 I&N Dec. at 889. In this instance, the Petitioner states that he will open his business in a Small Business Administration HUBZone³ in [] Florida; that he will eventually expand to other HUBZone areas in [] Georgia, [] Texas, and [] California; and that this expansion will "make a stand and impact, generating jobs for U.S. workers in these underutilized areas [and] improving the wages and the working conditions for the U.S. workers." He further states that participating in the HUBZone program will provide his business with a competitive advantage. However, he does not state how the business, which he will own, will meet the program requirement of being at least 51% owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe. U.S. Small Bus. Admin., HUBZone program, *supra*. He has not otherwise claimed or provided evidence that the areas where his company intends to operate are economically depressed.

The Petitioner's business plan states that in its fifth year, his company will have 24 full-time employees and four part-time employees and utilize the services of five contractors.⁴ However, the business plan also states that the relevant local economies employ 157,000 people in [] 257,000 in [] 1.14 million in [] and 2.02 million people in []. It is not apparent how employing 33 workers across these cities would have a substantial positive economic effect.

The record does not demonstrate that the endeavor would generate a significant economic benefit to the United States or to any of the cities or states it would operate in through employment levels, business activity, or trade, such that it would rise to the level of national importance. It also does not

² It is not evident that the proposed endeavor has broader implications for the field or that its effects would extend beyond the specific patients the company intends to treat. As explained in *Dhanasar*, "we look for broader implications" of the proposed endeavor and whether "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Matter of Dhanasar*, 26 I&N Dec. at 889.

³ The HUBZone program provides preferential contracting consideration to businesses whose headquarters and employees are located in "historically underutilized business zones," including economically depressed areas, qualified disaster areas, and areas where military installations were recently closed. See generally U.S. Small Bus. Admin., HUBZone program, <https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program>; 13 C.F.R. § 126.

⁴ While not stated by the Director, we note that most of the company's full-time employees will be its 15 physical therapists, who will be paid \$70,000 a year. The mean annual wage for physical therapists in the [] Florida area is \$94,800. In [] the mean annual wage for physical therapists is \$97,460, and in the [] areas, it is over \$108,000. Bureau of Labor Statistics, May 2022 Wage and Employment Estimates, <https://www.bls.gov/oes/current/oesrcma.htm> (select the relevant metropolitan area to see its wages by occupational area) (last visited Sep. 06, 2023). It is not apparent how employing physical therapists at wages at least 25 percent below their occupation's mean would improve the wages and working conditions of U.S. workers, as claimed in the business plan.

demonstrate that the endeavor would contribute to the advancement of the field of physical therapy. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1). The Petitioner has not demonstrated that his proposed endeavor has national importance, and so he does not meet the first prong of the *Dhanasar* test.

III. CONCLUSION

Because the Petitioner has not established his eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the other two prongs and hereby reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 did not otherwise meet their burden of proof). The Petitioner has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.