



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

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

MATTER OF C-W-K-

DATE: AUG. 8, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an industrial hygiene researcher, seeks second preference 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

We dismissed the Petitioner's appeal, and reaffirmed that decision on motion.¹ The matter is now before us on a second motion to reopen. We will deny the motion.

I. LAW

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

II. ANALYSIS

The Petitioner intends to continue his work as a researcher and teacher with [REDACTED]. He explains that his research will focus on "the anticipation, recognition, control, and prevention of the causes of silicosis" a disease described as "the most common occupational lung disease caused by

¹ *Matter of C-W-K-*, ID# 787048 (AAO Jan. 17, 2018) was our most recent decision in this matter.

inhalation of respirable crystalline silica (RCS).” He further describes how he aims to help protect the American worker from developing silicosis by improving the occupational health standards from silica exposure and continuing to expand his research applying diffuse reflectance infrared fourier transform spectroscopy (DRIFTS) techniques to wood dust sampling to influence worker safety policies. In addition to his research activities, the Petitioner contends that he will continue his mentorship of students in the [REDACTED] Environmental Health Sciences Academy at [REDACTED]

In denying the Petitioner’s appeal and initial motion, we found that he had met the first prong of the framework set forth in *Dhanasar* based on his proposed research, but that he had not satisfied the second or third prongs. The Petitioner files the current motion to reopen claiming that he provided sufficient evidence establishing that he has met all three prongs of the *Dhanasar* framework.² He also provides additional evidence, which we address below.

In the motion to reopen, the Petitioner maintains that his mentorship and teaching activities with the [REDACTED] should also be considered under the “national importance” element of the first prong. In our previous decisions, we noted that while the Petitioner’s proposed research activities met the first prong of the *Dhanasar* framework, his proposed mentorship and teaching activities did not meet the “national importance” element of that prong, as the record did not show they offered broader implications for the field. On motion, the Petitioner lists the research projects of three [REDACTED] program participants he previously mentored in 2013, 2014, and 2015, but does not present new facts or evidence demonstrating that his proposed mentorship activities offer benefits that extend beyond the [REDACTED] program to impact the field of environmental health education more broadly.

With respect to the issue of whether the Petitioner is well positioned to advance his proposed research endeavor under the second prong of the *Dhanasar* framework, the Petitioner reiterates his contention that he “found the software inconsistency” between two spectrometers which resulted in different conversion equations in DRIFTS studies, and reported it to their manufacturer, [REDACTED]. In our prior decisions, we found that he had not explained why this finding is significant or whether it impacted subsequent studies, and that a letter from [REDACTED] Scientific, which had been provided as supporting evidence, did not mention the Petitioner. On motion, he resubmits copies of email communications confirming that he worked to identify the inconsistency, and he states that his work was “important for [REDACTED] researchers . . . because careful interpretation about spectra of unknown samples is always necessary.” The record, however, does not show that this finding is sufficient to demonstrate a record of success of, or interest in, his research.

² To the extent that the Petitioner claims our previous decision was incorrect based on the record before us, this contention would be relevant to a motion to reconsider rather than a motion to reopen. See 8 C.F.R. § 103.5(a)(2), (3). Regardless, the Petitioner has not demonstrated that we erred in our previous analysis nor has he cited to any relevant law, regulation, or precedent establishing that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy. Accordingly, the instant filing would not meet the requirements of a motion to reconsider.

In addition, the Petitioner submits new evidence to support his contention that his master's thesis work concerning landfill and wastewater treatment in South Korea was utilized to stabilize a landfill site now known as [REDACTED]. He provides a report entitled [REDACTED]. This report lists a principal investigator, three "senior researchers," and four other "researchers" including the Petitioner. While the Petitioner and his colleagues issued a report to [REDACTED] and published their findings in [REDACTED], the record does not show that their work has generated positive interest among relevant parties, has been utilized beyond this single landfill stabilization project, or otherwise reflects a record of success in his area of research rendering him well positioned to advance his proposed research.

The Petitioner also provides a manuscript entitled [REDACTED] that he and his coauthors submitted for publication in [REDACTED] in October 2017. This article was submitted for publication after the petition's filing date. See 8 C.F.R. § 103.2(b)(1). In addition, he presents citation evidence from [REDACTED] for seven of his published articles. This documentation reflects that none of the Petitioner's articles has been cited to more than ten times. The Petitioner does not offer comparative statistics indicating how often other industrial hygiene researchers are cited, nor does the record otherwise demonstrate that his published research constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong.

Furthermore, the Petitioner offers a certificate indicating that he received an academic scholarship (2006) from the [REDACTED] of the [REDACTED] for his graduate study at [REDACTED], a certificate of recognition for "5 years of dedicated service" to [REDACTED] (2015), and information about the [REDACTED] process for becoming a [REDACTED]. The record, however, does not show that this documentation represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance occupational hygiene research. For the above reasons, we do not find that the newly submitted evidence sufficiently renders the Petitioner well positioned to advance his proposed endeavor.

Finally, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On motion, the Petitioner claims that he is eligible for this prong due to his published work, citation evidence, [REDACTED] scholarship, certificate of recognition from [REDACTED] and desire to become a [REDACTED]. Because the documentation in the record does not establish that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

³ The Petitioner asserts that he is eligible to take the [REDACTED] exam in Fall 2018, but does not provide evidence that he has received this [REDACTED] certification.

III. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is denied.

Cite as *Matter of C-W-K-*, ID# 1481908 (AAO Aug. 8, 2018)