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

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

MATTER OF T-U-O-A-

DATE: DEC. 29, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a university, seeks second preference immigrant classification for the Beneficiary 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 the petitioner has established a beneficiary's 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 USCIS' Nebraska Service Center denied the petition. The Director found that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that the Petitioner had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In its appeal, the Petitioner argues that the Beneficiary is eligible for a national interest waiver based on his work on the [REDACTED] project and his history of achievement in the field. The Petitioner contends that the Director did not assign proper weight to the letters of support and other evidence in the record.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's 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) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.²

II. ANALYSIS

The Director found that the Beneficiary qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The Petitioner proposes to continue to employ the Beneficiary as lead software engineer for the [REDACTED] "a [REDACTED] funded project that aims to create an innovative, comprehensive, and foundational cyberinfrastructure in support of plant biology research." [REDACTED] seeks to enable scientists throughout diverse fields in plant biology to address challenging issues in new ways, to stimulate and facilitate cross-disciplinary research, to promote biology and computer science research interactions, and to train the next generation of scientists on the use of cyberinfrastructure in research and education. The Petitioner indicates that the Beneficiary "leads the Core Software team for all of [REDACTED] and that "under his leadership this team is responsible for the design, development, and innovations associated with the primary software platform that allows researcher[s] to manage and analyze massive data sets."

A. Substantial Merit and National Importance of the Proposed Endeavor

The record reflects that the Beneficiary's work involves designing a web user interface and integrating it with high performance computing platforms to allow scientific researchers to manage massive data sets. The [REDACTED] project seeks to deliver useful tools for the benefit of plant science research. The Petitioner submitted information from [REDACTED] website, stating: "By enabling biologists to do data-driven science by providing them with powerful computational infrastructure for handling huge datasets and complex analyses, [REDACTED] fills a niche created by the computing epoch and a rapidly evolving world." We find that the Beneficiary's work has substantial merit because it supports the needs of the scientific community and facilitates progress in plant biology research.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for further elaboration on these three prongs.

The record also demonstrates that the Beneficiary's proposed work to continue developing a cyberinfrastructure for life sciences research and to provide users with access to supercomputing capabilities is of national importance. The Petitioner submitted probative letters from experts in the field that describe the national importance of the Beneficiary's work as lead software engineer for [REDACTED] co-director of the [REDACTED] project and director of advanced computing at the [REDACTED] explained that [REDACTED] "is a 10-year \$100 million dollar investment by the [REDACTED] that is part of a comprehensive national initiative to address the urgent need for facile access to enormously powerful data storage, computing, and collaborative work environments." In addition, the Petitioner provided published articles discussing the widespread benefits associated with the [REDACTED] project. For instance, an [REDACTED] 2014 article in *Journal of Experimental Botany* noted that [REDACTED] makes complex bioinformatics resources more accessible researchers in the plant science community, furthers discoveries in plant science research, and provides a platform for education and outreach programs. The article further stated: "Based in the U.S., [REDACTED] [cyberinfrastructure] is a platform open to anyone around the world; its 18,500 users can freely access a comprehensive suite of intuitive, user-friendly tools and resources created with data storage, sharing, and analysis challenges relevant to the life sciences." The expert letters and published articles show the importance of the Beneficiary's work to plant biology research both nationally and internationally.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted numerous support letters describing the Beneficiary's expertise and record of success in his past work as lead software engineer for [REDACTED]. For example, [REDACTED] indicated that the Beneficiary designed and implemented the [REDACTED] "a powerful and intuitive web interface" used for interacting with and accessing the "computing, storage, and analysis application resources provided by [REDACTED] cyberinfrastructure." [REDACTED] further noted:

[The Beneficiary's [REDACTED] facilitates data-driven exploration and scientific discovery by providing, at unprecedented scalability and flexibility:

1. Analytical tools that can be used individually or in work flows, allowing for truly reproducible scientific research
2. Seamless access to the [REDACTED] a national-scale cloud storage system for science
3. Ability to run sophisticated, resource intensive computations on national [high performance computing] resources
4. User-friendly interfaces for sharing data, workflows, analysis results, and data visualizations with collaborators or the public at large

Furthermore, [REDACTED] stated that the advanced functionality developed by the Beneficiary "has allowed thousands of biologists to prosper, computationally, and has led to the publication of seminal

³ While we discuss only a sampling of these letters, we have reviewed and considered each one.

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papers in fields as diverse as genome science and evolutionary theory.” Lastly, [redacted] explained that additional features are planned for the [redacted] which “are utterly essential to continue the pace of successful enablement that [redacted] has set in its first years of operation” and that the Beneficiary’s “continued leadership of this project is critical, as his experience and insight to date are largely responsible for [its] success.”

[redacted] co-principal investigator of [redacted] noted: “[The Beneficiary] is the architect and leads the development of the [redacted] . . . [T]he persuasive nature and use of this platform is evident through multiple publications that cited the use of [redacted] for accomplishing tasks that were not possible before.” In support of [redacted] statement, the Petitioner provided documentation of 222 research publications that mention or acknowledge [redacted] resources as contributing to the work or results being published. [redacted] also indicated that the “popularity of the [redacted] has resulted in multiple organizations wanting to adopt it for managing their large-scale scientific analysis.”

[redacted] a scientific analyst for [redacted] indicated that the Beneficiary “leads the core software development” for the project and “has contributed greatly to the development and improvement of the [redacted] Similarly, [redacted] professor of management information systems, entrepreneurship, and innovation at the [redacted] stated that [redacted] “is being used by hundreds of scientists, researchers, professors, [and] graduate students across the globe every day” and that it is especially helpful because it “has no pre-requisite computer programming skills for its use.”

[redacted] acting director of the [redacted] discussed how the Beneficiary and his team “have taken an innovative approach in constructing the [redacted] . . . making many of the tools and resources that were only available to a select few scientist[s] widely available to the research community. To date [redacted] has approximately 15,000 registered users . . .” In addition, [redacted] pointed out that the Beneficiary’s work “is at the leading edge of the ‘Big Data’ movement in the scientific community, and of key interest to numerous federal agencies.” [redacted] further stated that [redacted] “was initially funded for \$50 million for five years (2008-2013) and recently has been renewed for additional five years (2013-2018) with a broader scope of addressing computational need beyond plant sciences.” He added that the Beneficiary’s “continued presence is required to grow [redacted] capability to serve the growing needs of researchers and scientists.”

With regard to the Beneficiary’s role as development leader of the [redacted] a professor in the School of [redacted] at the [redacted] indicated that he “has put together an exceptional road map for [redacted] with several useful features like batching user analyses, project management capabilities, custom metadata, keyword tagging, and advanced search functions.” Furthermore, [redacted] stated: “With more than fifteen thousand registered users relying on [redacted] cyber-infrastructure, [the Beneficiary’s] continuance at [redacted] Collaborative is vital to its success and meeting the growing needs of biologists across the nation.” Finally, [redacted] mentioned that the “software products of [the Beneficiary’s] team are now being used as the foundation of new companies in the U.S. and the model by which other countries address their life science computational needs.”

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_____ senior software developer for the _____ described how the Beneficiary's "contribution to design and architecture of the _____ is vital in allowing _____ to take advantage of the advances in metadata management, large scale data management, and the linking of computation to data." _____ indicated: "The integration of the _____ software into the _____ data grid is a critical contribution to our cyberinfrastructure efforts, and has been identified by our multi-institutional collaborators as a valuable asset in managing and accessing research data."

As detailed above, the significance of the Beneficiary's past projects in the field is corroborated by documentation of praise for his work and published articles reflecting widespread utilization of the _____ in the scientific community. The Beneficiary's experience and expertise in his field, his record of success in developing and implementing _____ his contribution to the expansion of _____ beyond plant sciences, and his significant role as lead software engineer for the project, which has received ongoing funding from _____ position him well to advance his proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As leader of the team responsible for development of _____ cyberinfrastructure, the Beneficiary possesses considerable experience and expertise in the software engineering field. The record also demonstrates the national importance of developing a cyberinfrastructure for plant science research and providing users with access to supercomputing capabilities. The Petitioner has documented the Beneficiary's past successes delivering useful software tools for the benefit of the research community. In addition, the continued funding from the _____ and expansion of the Beneficiary's project beyond plant sciences demonstrate that the greater scientific community has found his work on _____ to be promising and useful. For these reasons, we find the Petitioner has established that the United States will benefit from the Beneficiary's contributions even assuming that other qualified U.S. workers were available to perform these software engineering functions. Therefore, we conclude 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.

III. CONCLUSION

The Petitioner has demonstrated that the Beneficiary meets the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that the Beneficiary is eligible for and otherwise merits a national interest waiver as a matter of discretion. Accordingly, the Petitioner has met its burden to establish the Beneficiary's eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is sustained.

Cite as *Matter of T-U-O-A-*, ID# 77945 (AAO Dec. 29, 2016)