



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

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

MATTER OF N-K-

DATE: APR. 14, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a university instructor and multicultural education 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 the 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 she had not established that a waiver of a job offer and thus of a labor certification would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.

The matter is now before us on a joint motion to reopen and reconsider. In January 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In support of her motion, the Petitioner submits a brief and additional documentation, asserting that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon review, we will deny the motion.

**I. LAW**

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at

8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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) 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.<sup>1</sup> *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.

---

<sup>1</sup> 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*).

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 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.<sup>2</sup>

## II. INTRODUCTION

The Petitioner received a Ph.D. in curriculum and instruction from the [REDACTED] in 2013. Accordingly, the Director found that she qualifies as a member of the professions holding an advanced degree. The sole 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.

At the time of filing the petition, the Petitioner was teaching online anthropology courses as an associate faculty member at [REDACTED]. She also held appointments in the department of chemistry and biochemistry at the [REDACTED] teaching "General Chemistry labs I and II," "Fundamentals of Chemistry lab," "[REDACTED]" and drill sessions. After filing the petition, she continued to teach courses at the [REDACTED] including "Chemistry," "General Sociology," "Race, Class, and Gender," "Social Psychology," and "Cross-Cultural Perspectives."

---

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

In an introductory letter, the Petitioner indicated that she seeks to continue her “research work improving educational practices for minority populations,” and that “[h]er work has direct and tangible applications in both public schools and in educational methods research.” She further explained that the methods and practices she is developing are “directly improving student retention rates for culturally diverse populations and addressing the cultural bias in public schools in the United States.”

### III. ANALYSIS

#### A. Substantial Merit and National Importance of the Proposed Endeavor

On motion, the Petitioner asserts that “[a]s an expert in multicultural education, [her] work focuses more on the application and teaching of the integration of culturally and linguistically appropriate approaches and implementations in pedagogy and classroom practices rather than specific academic research.” She further states: “However, unlike others in this field, I have placed myself above my peers by conducting important research as well.” Our RFE asked the Petitioner to provide updated information and evidence regarding her current employment and her plans for future work as a university instructor, author, and multicultural education researcher.

In response, the Petitioner offers a statement detailing her future plans for work in the United States. The Petitioner indicates that she intends to continue her research in educational sociology and multicultural education. She states that she is currently “an instructor at [REDACTED] teaching and working on two papers and a book to be published soon.” In addition, she contends that her “research will broadly continue to examine issues of social justice with specific remits on access, progression, and general equal opportunity issues.” She further explains that her research studies will address “understanding the importance of social factors, cultural diversity, and social communications patterns as critical issues to address the conflict between the dominant ideological structures and social values and the sensitivity to diversity [that] exist within the social institutions especially educational institutions.” The Petitioner’s statement also emphasizes the “urgent need” to prepare teachers with skills and instructional practices that assist culturally and linguistically diverse (CLD) students in becoming successful learners. Her statement goes on to list four specific research projects focused on CLD student learning as part of her future research plans.

We find that the Petitioner’s proposed work as a multicultural education researcher, which aims to improve teacher competencies and the learning environment for CLD students, has substantial merit. In his letter, the Petitioner’s former academic and researcher advisor, [REDACTED] professor emeritus at the [REDACTED] explains how increasing diversity in U.S. classrooms is “requiring teacher candidates to acquire competencies in addressing the needs of their student population.” [REDACTED] indicates that the Petitioner’s research will develop new training methodologies to equip teachers with skills that make them “culturally competent to teach in diverse settings.” Furthermore, the record includes additional reference letters discussing how the Petitioner’s research concerning the learning needs of CLD students will help ensure that they have equitable access to quality education.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of her proposed endeavor. Specifically, we requested documentation demonstrating that the Petitioner's proposed work has broader implications for her field.

The evidence offered on motion demonstrates that the Petitioner's proposed endeavor of multicultural education research is of national importance.<sup>3</sup> For example, the Petitioner submits letters from faculty at the [REDACTED] discussing her research concerning CLD students and its potential benefit to our nation's educational system. The record also includes evidence indicating that the proposed benefit of her multicultural education research has broader implications, as the results from her work are disseminated to others in the field through publication in education journals and books. As the Petitioner has documented the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner previously submitted her research articles, evidence of her participation in academic conferences, alumni and honor society memberships, graduate assistantships, employment verifications, teaching evaluations, and academic credentials (including two master's degrees in sociology and anthropology). She also submitted various reference letters discussing her educational background, teaching experience, and research projects.

Our RFE requested the Petitioner to submit documentation showing that she is well positioned to advance her proposed endeavor. In response, the Petitioner provides four additional letters of support, teaching evaluations from 2016-2017, a [REDACTED] report reflecting downloads of her Ph.D. research, her [REDACTED] profile page, a copy of her 2016 book entitled [REDACTED] webpages indicating that her book is available for purchase, and an invoice showing five books were sold. In addition, the Petitioner offers evidence that she has drafted another book entitled, [REDACTED] which has been submitted for publication. She also submits documentation reflecting her participation in an [REDACTED] offered by the [REDACTED] (2000), a [REDACTED] (2011), and a [REDACTED] (2011).

As discussed below, we find that the Petitioner's qualifications as a multicultural education researcher are not sufficient to render her well positioned to advance her proposed endeavor. Our previous decision noted that while the Petitioner provided documentation of her research articles and books, they were published after the Form I-140 petition was filed. Additionally, the record includes

<sup>3</sup> Regarding the Petitioner's teaching duties at [REDACTED] the record does not establish that her course instruction would impact the field of education more broadly. Accordingly, her teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. See *Dhanasar*, 26 I&N Dec. at 893.

reference letters from several of the Petitioner's professors and colleagues discussing her graduate research at the [REDACTED]. Although the reference letters and motion offer details of the Petitioner's work on various research projects, the evidence does not show that, once published or presented, her research has been frequently utilized by other professionals in her field, has affected practices in various school systems, has generated substantial positive discourse in the broader academic community, or otherwise renders her well positioned to advance her proposed endeavor. Nor does the record demonstrate that the Petitioner's research findings have garnered a significant number of independent citations or have otherwise impacted multicultural education initiatives in her field.

The Petitioner maintains that her graduate research is indicative of her record of success as a multicultural education researcher. Three professors at the [REDACTED] discuss how the Petitioner's graduate research involved her development of a [REDACTED] for implementing culturally responsive teaching practices. [REDACTED] indicates that the Petitioner's "multicultural model guides teachers to utilize participant observation and ethnographic methodologies as effective ways" for helping "teachers learn how to comfort their students who belong to different cultures." In addition, [REDACTED] professor of statistics and research methodology, contends that the Petitioner's "competency model can be integrated and modified in collaboration with other researchers to expand it into new models that would be adapted by many school districts and teacher education programs nationwide," but he does not identify any school districts that have adopted the Petitioner's model or intend to utilize it to improve their teaching practices. Furthermore, [REDACTED] university professor of special education, states that the Petitioner's "work will help strengthen and support effective culturally responsive teaching to assist teachers in building a classroom atmosphere that will encourage and significantly increase learning for culturally and linguistically diverse students." [REDACTED] however, does not offer any examples of school systems that have implemented the Petitioner's specific approaches to show that she is well positioned to advance her endeavor. While the [REDACTED] report submitted in response to our RFE shows that others have downloaded and viewed the Petitioner's graduate work, the report does not demonstrate the level of impact of her research or that her findings have affected the multicultural education field to an extent that would render her well positioned.

[REDACTED] an assistant professor at [REDACTED] attests that the Petitioner helped her develop a culturally-sensitive curriculum for her classroom practices and consulted with her on the development of a school mentoring program, but the record does not show that their work has affected the multicultural education field beyond their joint projects or has garnered significant interest in the academic community.<sup>4</sup> [REDACTED] indicates that the Petitioner "has been a non-compensated editor for many of my refereed publications" and she lists three of her own articles in which she contends the Petitioner's work "was extremely influential." The record, however, does not include copies of [REDACTED] three articles reflecting that they cited to or otherwise

---

<sup>4</sup> Although the Petitioner identifies [REDACTED] as an "independent evaluator," they were both graduate students at the [REDACTED] during the same time period. Additionally, [REDACTED] initial letter stated that she has known the Petitioner "for approximately 7 years."

acknowledged the Petitioner's research findings. Moreover, the Petitioner has not shown that informally editing and reviewing her colleague's articles about bullying, student retention, and counselor educator attitudes toward persons with disabilities demonstrate that she has advanced the field of multicultural education research or that she is otherwise well positioned to improve CLD student outcomes.

As an additional example of the Petitioner's achievements, the record includes copies of the Petitioner's research articles and two books, but there is no evidence showing that they had been published at the time of filing the Form I-140 on July 29, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (2); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the Petitioner's research findings that were not yet published or disseminated as of the filing date do not establish her eligibility at the time of filing.

Furthermore, the Petitioner points to her design of a "[redacted]" for the "[redacted]" and her "overview of how [redacted] is used in teacher education programs," but her references do not specifically mention this work or explain its effect on the field of multicultural education. Nonetheless, there is no indication that the Petitioner's "[redacted]" and "[redacted]" overview have garnered favorable attention in the academic community, advanced various school systems' multicultural education training programs, been used or implemented in multiple school settings, or otherwise demonstrate that she is well positioned.

With respect to the Petitioner's teaching activities, she offers reference letters, student survey results, and teacher performance evaluations indicating that she has been an effective instructor at "[redacted]" and the "[redacted]". The record, however, does not establish that her expertise in course instruction renders her well positioned to advance multicultural education research aimed at improving the learning environment for CLD students. Lastly, while the Petitioner's participation in the "[redacted]" and training workshops increased her professional knowledge and skills as an instructor, they are not sufficient to demonstrate that she is well positioned to advance her proposed endeavor of improving educational practices that focus on CLD students.

The evidence discussed above is insufficient to demonstrate that the Petitioner is well positioned to advance multicultural education research aimed at improving teacher competencies and the learning environment for CLD students. Accordingly, she has not established that she satisfies the second prong of the *Dhanasar* framework.

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

The Petitioner asserts that she "possesses unique knowledge and skills that serve the national interest but are not easily articulated in a labor certification." She also contends that the United States will benefit from her "innovative and influential contributions," and that our country's increasing diversity

and lower student proficiency in primary and secondary education underscores the urgency of her contributions in the field of multicultural education.

We recognize the likelihood that some of the Petitioner's knowledge and experience exceeds the minimum requirements for her occupation and therefore could not be easily articulated on an application for labor certification.<sup>5</sup> The Petitioner, however, has not shown that she presents a significant benefit to the United States through her proposed endeavor or that her prospective work would serve an urgent national interest. While the Petitioner proposes to continue her research aimed at fostering multicultural education improvements, her level of progress and success does not outweigh the benefits inherent in the labor certification process. With respect to embracing diversity in the U.S. education system and improving our nation's primary and secondary education rankings, the Petitioner has not shown an urgent national interest in her own contributions to achieve this aim, nor has she demonstrated instructional innovations or other contributions that would benefit the nation even if other qualified U.S. workers were available. In sum, the evidence does not indicate that the Petitioner offers contributions of such value 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. The Petitioner therefore has not established that she meets the third prong of the *Dhanasar* framework.

#### IV. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of N-K-*, ID# 191636 (AAO Apr. 14, 2017)

---

<sup>5</sup> The labor certification process is designed to certify that a foreign worker will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from operational necessity.