



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

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

MATTER OF A-R-A-A-E-

DATE: MAY 10, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a physician and researcher specializing in cardiology, 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 Nebraska 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 a job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal.

In February 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, the Petitioner submits additional documentation and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

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) 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.

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

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<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*).

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. ANALYSIS

The Director found that the Petitioner 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 Petitioner was pursuing postgraduate medical training as a general cardiology fellow at the [REDACTED]. In response to our RFE, he submits a June 2016 letter offering him "a position as a fellow in our [REDACTED] at [REDACTED]. This letter states that the Petitioner's "fellowship is one year in length, and your training will begin on July 1, 2017 and be completed on June 30, 2018."

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

The Petitioner previously stated that his clinical work offering quality healthcare "has an effect on the health care system of the United States as a whole" and that his "medical research is having a widespread impact on the quality of medical care across the United States." In a letter of support, [REDACTED] professor of cardiology at [REDACTED] stated "As a cardiologist, [the Petitioner] treats and does research on a wide range of heart conditions, including systolic heart failure, which constitutes about 50% of heart failure cases. This amounts to 2.5 million patients in the United States . . . and it is a major cause of morbidity and mortality." Whether as a physician or researcher, we find that the Petitioner's proposed work as a cardiologist has substantial merit.

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

<sup>3</sup> He previously completed an advanced heart failure and transplant cardiology fellowship at the [REDACTED] and [REDACTED].

<sup>4</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about this prospective position to illustrate the capacity in which he intends to work.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of his work. The Petitioner's response states that "[a]s a share of the nation's Gross Domestic Product [GDP], health spending accounted for 17.8 percent of U.S. GDP, so [the Petitioner's] contributions as both a clinician and a researcher are undoubtedly of national importance." He further indicates that his clinical work "saving the lives of sick patients" offers such a valuable contribution to the nation "that it cannot be statistically quantified, as he is responsible for the precious health and lives of countless U.S. citizens." While the Petitioner's care and treatment of patients have substantial merit, the record does not establish that his clinical work would impact the cardiology field and healthcare industry more broadly, as opposed to being limited to the patients he serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a physician and cardiologist does not meet the "national importance" element of the first prong of the *Dhanasar* framework.<sup>5</sup>

Nonetheless, the Petitioner's response attests that the national importance of his work "is primarily demonstrated by the research he has done and is continuing to do, as evidence [*sic*] by his multiple publications . . . ." To the extent that the Petitioner proposes to conduct cardiology research, we find the evidence sufficient to demonstrate that such research is of national importance. For example, the record includes letters from physicians and professors of medicine discussing his research concerning heart conditions and its potential benefit to our nation's healthcare system. In addition, the Petitioner has submitted documentation indicating that the proposed benefit of his cardiology research has broader implications, as the results from his work are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he 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 documentation of his published work, conference presentations, professional memberships, academic credentials, and internal awards from [REDACTED]. He also offered various reference letters discussing his medical training and research projects. In response to our RFE, the Petitioner additionally provides his curriculum vitae (CV), further publications and presentations, medical credentials, and emails inviting him to publish and present his work.

As discussed below, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rises to the level of rendering him well positioned to advance his proposed research endeavor of understanding unique heart conditions and identifying proper methods of diagnosis and treatment.<sup>6</sup> See *Dhanasar*, 26 I&N Dec. at 890. The

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<sup>5</sup> Similarly, 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.

<sup>6</sup> As noted above, the Petitioner has not demonstrated that his proposed clinical activities as a physician meet the "national importance" element of the *Dhanasar* framework's first prong. Accordingly, we will limit our analysis under

Petitioner maintains that he has “provided substantial evidence of [his] achievements, including letters of support” and that the record shows his work “is having a substantial impact on medical care in the United States.”

In letters supporting the petition, various medical professors discussed the Petitioner’s research aimed at understanding rare cardiac conditions. For example, [REDACTED] professor of pediatrics at [REDACTED] stated that the Petitioner “was able to demonstrate, by coronary angiography, for the first time in the medical literature that coronary flow impairment can be secondary to not only atherosclerosis, but also compression from the outside such as pericardial effusion.”<sup>7</sup> [REDACTED] indicated that the Petitioner’s findings provided his peers “with a better understanding of effusive constrictive pericarditis so that they could put this valuable knowledge to practice in their own institutions across the United States and around the world.” Similarly [REDACTED] assistant professor of medicine at [REDACTED] indicated that the Petitioner performed “a very interesting study on cardiac catheterization and coronary angiography that addresses the differences between performing these procedures by assessing the heart via the femoral artery . . . and the radial artery . . . .” He further noted that this study “produced a wealth of data and some very promising conclusions about the trans-radial approach, which has been shown to have higher patient satisfaction, less bleeding, and shorter hospital stays.” The letters from [REDACTED] and [REDACTED] do not, however, provide specific examples of how the Petitioner’s findings have generated positive interest among relevant parties, have been implemented at medical institutions, or otherwise reflect a record of success in his area of research.

[REDACTED] assistant professor at [REDACTED] discussed two of the Petitioner’s recent medical case reports. He noted that the Petitioner’s first paper described a case involving an endomyocardial biopsy with a coronary-cameral fistula and that his second paper reported on a case involving left main coronary artery spasm. In addition, [REDACTED] asserted that the Petitioner’s reports will offer useful guidelines to physicians faced with similar medical cases. While the record reflects that the aforementioned case reports were submitted for publication, the evidence does not show that they had been published at the time of filing the Form I-140 on June 18, 2015, or that his findings had drawn the interest of relevant individuals or entities prior to publication. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

Two references from [REDACTED] offer further examples of the Petitioner’s research that was published or presented after the petition’s filing date. For instance, [REDACTED] professor and chief of cardiology, indicated that the Petitioner recently performed a study that examined “the mortality and cost of hospitalized patients with acute and chronic diastolic heart failure in the United States.”<sup>8</sup> Additionally, the response to our RFE includes a March 2017 letter from [REDACTED]

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this prong to his proposed research.

<sup>7</sup> The Petitioner’s research was presented at the [REDACTED] (2012).

<sup>8</sup> According to his CV, the Petitioner presented this work at the [REDACTED] in [REDACTED] 2016.

professor and chief of the division of cardiovascular medicine, stating that the Petitioner “recently submitted a paper for publication to [REDACTED] in which he “reported a unique way to treat prosthetic valve malfunction in preparation for pump deactivation in a patient with LVAD” (left ventricular assist device). As the research discussed in [REDACTED] and [REDACTED] letters was published or presented long after the petition was filed, it does not establish the Petitioner’s eligibility at the time of filing.

Other medical faculty discussed the Petitioner’s cardiovascular disease research. With respect to the Petitioner’s study concerning [REDACTED] [REDACTED] professor of internal medicine at [REDACTED] indicated the Petitioner found that, “contrary to commonly accepted assumptions,” [REDACTED] “does not occur in females during the last month of gestation or first few months of delivery, but that it affects a wider range of patients.” [REDACTED] contended that the Petitioner’s work provides his “his peers with a greater understanding of the condition.” Furthermore, [REDACTED] associate professor of medicine at [REDACTED] stated that the Petitioner performed a study in which “he reviewed over three years of outcomes” of percutaneous coronary intervention (PCI) and concluded that “patients who had more complex and lengthy procedures experience more bleeding.”<sup>9</sup> [REDACTED] indicated that the Petitioner’s “promising results require further study” and have “potential” to lead to advances in acute coronary syndrome treatment.

While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. In this case, the record demonstrates that the Petitioner has conducted and published research during his medical training. He has not shown, however, that his research has been frequently cited by independent cardiologists or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community. Nor does the record demonstrate another factor that renders the Petitioner well positioned to advance his proposed endeavor. Accordingly, he has not established that he satisfies the second prong of the *Dhanasar* framework.

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

The Petitioner asserts that it would be impractical for him “to secure a job offer or obtain a labor certification.” He states that “[b]ecause he is engaged in a training program that does not amount to an offer of permanent employment, he is not eligible for labor certification.” Additionally, he contends

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<sup>9</sup> PCI is a live saving measure for patients with acute coronary syndrome “involving the placement of a stent in the acutely occluded artery.”

that he has performed “valuable research” as part of his fellowship and that “he intends to continue this important research that he could not otherwise complete in another position.”

While we acknowledge that the Petitioner’s participation in an interventional cardiology training program makes obtaining a labor certification impractical at this stage of his career, he has not demonstrated, as claimed, that he presents benefits to the United States through his proposed endeavor that outweigh those inherent in the labor certification process. With respect to his cardiology research, the Petitioner has not shown an urgent national interest in his own efforts, nor has he demonstrated that he offers contributions of such value that, over all, they would benefit the nation even if other qualified U.S. workers were available. In sum, the Petitioner has not demonstrated 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 he meets the third prong of the *Dhanasar* framework.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-R-A-A-E-*, ID# 279893 (AAO May 10, 2017)