



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

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

MATTER OF N-S-M-K-

DATE: MAY 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a fluid mechanics and heat transfer 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).¹

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 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.²

The matter is now before us on a motion to reconsider. The Petitioner initially offered a brief in support of the motion contending that she was eligible for a national interest waiver under the framework identified in *NYSDOT*. While the motion was pending, we issued *Dhanasar*, our precedent decision modifying the analytical framework for national interest waivers. We subsequently reopened the matter on our own motion and issued a request for evidence (RFE) asking the Petitioner to provide proof satisfying the new three-part framework set forth in *Dhanasar*. In response, the Petitioner submits a letter from counsel and additional documentation, asserting that she is eligible for a national interest waiver under the *Dhanasar* framework. Upon review, we will deny the motion to reconsider. In addition, as the record does not establish eligibility for 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*).

² *See Matter of N-S-M-K-*, ID# 77881 (AAO Sept. 29, 2016).

discretionary national interest waiver under the framework set forth in *Dhanasar*, the petition will remain denied.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy. 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. . . . [T]he 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,” *Dhanasar* stated that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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.³

II. ANALYSIS

The record indicates that the Petitioner intends to work as a researcher and teacher in the department of mechanical and aerospace engineering at [REDACTED]. In his support letter, [REDACTED] chair of [REDACTED] department of mechanical and aerospace engineering, explained that the Petitioner's responsibilities would include teaching three courses per semester, collaborating on "fire safety research and interactive [REDACTED] education and training," studying properties of nano and ferrofluids "such as optical and thermal properties," and "supervising graduate students and/or post-doctoral fellows."

A. Motion to Reconsider Under the *NYS*DOT Framework

The Petitioner filed the current motion to reconsider prior to the publication of *Dhanasar*, contending that our appellate decision under the *NYS*DOT framework was erroneous. In our appellate decision, we acknowledged that the Petitioner satisfied the first two prongs of the *NYS*DOT framework but determined she had not met the third prong requiring a petitioner to justify projections of future benefit to the national interest by establishing a past history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6. We found the Petitioner had not established by a preponderance of the evidence that she had such a record of achievement or that she would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On motion, the Petitioner asserted that we improperly compared her accomplishments to those of the individuals who wrote her letters of support and dismissed the appeal because her qualifications were “not as great as those of the senior references.” One of the projects through which the Petitioner asserted she influenced the field was the [REDACTED] training module, a web-based training program for [REDACTED]. While our appellate decision discussed the involvement of two of the Petitioner’s references with that program, our decision was not based on a finding that their accomplishments and qualifications exceeded those of the Petitioner. Rather, we found that, although the record indicated the Petitioner may have provided support and assistance to the development of [REDACTED] it did not support the claimed significance of her particular role in the development of the training module or demonstrate that her work on that project had influenced the field of fluid mechanics and heat transfer.⁴

The Petitioner further states that the “value of her contributions has been affirmed by her collaborators, including [REDACTED] and [REDACTED],” and that their letters “should be afforded significant evidentiary weight.” Our decision addressed and thoroughly considered the information offered in these letters. The Petitioner’s motion does not point to any specific errors in our discussion and analysis of their statements.

In addition, the Petitioner mentions our analysis of the letters from [REDACTED] professor of physics and pharmaceutical sciences at [REDACTED] and [REDACTED] professor of biomedical engineering at the [REDACTED]. [REDACTED] indicated that he collaborated with the Petitioner “on developing [a] new system of imaging and treating the brain tumor by using [REDACTED].” With regard to their collaboration, [REDACTED] stated that “society will benefit from this research in the future.” Similarly, [REDACTED] asserted: “[The Petitioner’s] research methodologies and findings could be applied to my work, with the potential to yield results to improve biomedical imaging systems or develop new instrumentations.” In addressing their comments, our decision stated:

While [REDACTED] and [REDACTED] attested to the potential impact of the Petitioner’s work, they did not offer any examples indicating that her work already has been utilized in any thermal systems, has altered diagnostic or treatment protocols for brain tumors, has improved biomedical imaging systems, has affected the development of new medical instrumentation, or has otherwise influenced the field as a whole. A petitioner cannot successfully file a petition under this classification based on the expectation of future eligibility. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12)

⁴ For example, we noted that although the record included various articles about [REDACTED] that were written or contributed to by her references, the Petitioner was not listed as an author or acknowledged in the articles. In addition, we observed that the Petitioner provided a copy of [REDACTED] résumé listing the [REDACTED] copyright ([REDACTED] February 2013) among his research accomplishments, but did not offer intellectual property documentation identifying herself as [REDACTED] developer or inventor. See *Matter of N-S-M-K-*, ID# 77881 at 4-5.

The Petitioner contends that our language in the first sentence of the above paragraph “suggests that a standard far stricter than ‘some degree of influence’ has been applied in this case.” Our analysis, however, was based on the assertions of [REDACTED] and [REDACTED] regarding the prospective impact of the Petitioner’s research aimed at utilizing [REDACTED] in medical imaging systems. In our decision, we explained why the references’ statements were insufficient to demonstrate the Petitioner’s eligibility at filing by showing that she had a past record of achievement with a degree of influence on the field as a whole.

The arguments the Petitioner offers on motion do not establish that our appellate findings were based on an incorrect application of the *NYSDOT* framework, law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision.

B. Eligibility Under the *Dhanasar* Framework

As the relevant framework changed while this matter remained pending, we will now consider whether the record, including new evidence submitted in response to our RFE, demonstrates the Petitioner’s eligibility under the *Dhanasar* framework. As stated previously, she intends to work as a researcher and teacher in the department of mechanical and aerospace engineering at [REDACTED]. In response to our RFE, the Petitioner offers a letter from [REDACTED] affirming that his institution has continued its “collaboration with [her] through our [REDACTED] campus” since 2016, and that his department wishes “to have [her] rejoin our team in the United States in the future, specifically in a position that would allow her to continue instructing our engineering students and would also facilitate her continued research in the areas of nanofluids and fire safety.”⁵

1. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner previously stated her work will focus on behaviors of nanofluids and ferrofluids, and fire safety research. She indicated that her “work with ferrofluids has a broad range of potential applications that are meritorious for their medical applications and their prospective benefit to the national economy.” In addition, she asserted that her fire safety research will have an “impact on the safety and welfare of [REDACTED] across the country.” The Petitioner’s response to our RFE maintains that she will continue to perform research in the areas of “fluid mechanics and heat transfer.” She contends that her proposed endeavor has “a significant impact on fire safety research and has potentially significant implications for ongoing biomedical and bioengineering research.” The record includes letters of support and published articles discussing the benefits of these areas of research. Accordingly, we find that the Petitioner’s proposed work as a fluid mechanics and heat transfer researcher has substantial merit.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. Nevertheless, we will consider information about this prospective position to illustrate the capacity in which she intends to work.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of her work. In response, the Petitioner asserts that her research and collaborations with the [REDACTED] have a "national impact on the study of fire safety in the United States – as well as on the training [REDACTED] throughout the country receive." In addition, she contends that her research in the area of ferrofluids and nanofluids contributes to "the development of advanced medical treatments, therapies, and drug delivery systems."

We also find the evidence sufficient to demonstrate that the proposed research is of national importance. For example, in his latest letter, [REDACTED] a senior research scientist at [REDACTED] cites data from the [REDACTED] concerning [REDACTED] fatalities in the United States. In addition, [REDACTED] a professor of mechanical engineering at [REDACTED] and the Petitioner's Ph.D. advisor, states that her "work with [REDACTED] can be very useful not only in biomedical engineering devices, but also in medical diagnostics and therapy." He further indicates that the proposed research could offer "improvements in medical devices and drug delivery technologies" that "have the potential to improve and save the lives of millions of Americans and others around the world." In addition, the Petitioner has submitted documentation indicating that the benefit of her proposed fluid mechanics, heat transfer, and fire safety research has broader implications, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

Regarding the Petitioner's proposed teaching duties at [REDACTED] we find that they have substantial merit. The record, however, does not establish that her course instruction would impact her endeavor more broadly, as opposed to being limited to the students at the institution where she teaches. Accordingly, without sufficient documentary evidence of their broader impact, the teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. 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. We note that the Petitioner's RFE response does not maintain that her proposed endeavor is teaching. Rather, she specifies that her endeavor is research in the fields of fluid mechanics and heat transfer.⁶

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications.⁷ The Petitioner submitted documentation of her published work, conference presentations, peer

⁶ As the Petitioner's proposed teaching activities as an instructor do not satisfy the "national importance" element of the *Dhanasar* framework's first prong, we will limit the remainder of our analysis to her proposed research.

⁷ Under this prong of *Dhanasar*, the Petitioner must go beyond showing expertise in her particular field. A petitioner "cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in [her] field of expertise." *Id.* at 886, n.3.

review activities, research projects, and academic credentials (including a bachelor's degree, master's degree, and Ph.D. in mechanical engineering). She also offered various reference letters discussing her research projects at [REDACTED].³ In response to our RFE, the Petitioner provided her CV; further research articles and presentations; and emails inviting her to publish and present her work, and to perform peer review. Her evidence also included copies of nine [REDACTED] test reports (2008-2011), a [REDACTED] technical report ([REDACTED] 2009), information about [REDACTED] and its [REDACTED] and updated letters of support from previous references. As discussed below, we find that the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, that rises to the level of rendering her well positioned to advance her proposed research endeavor. *See Dhanasar*, 26 I&N Dec. at 890.

The Petitioner maintains that her education, knowledge, and skills in fluid mechanics and heat transfer; research background at [REDACTED] publications; and presentations show that she is well positioned to advance the study of fire safety, nanofluids, and ferrofluids. The record contains letters from [REDACTED] engineering faculty members discussing her fire research activities, which has included work on projects funded by the [REDACTED] and on the [REDACTED] web-based training program. For example, [REDACTED] stated that she "assisted the [REDACTED] team to successfully complete three projects" funded by the [REDACTED] program. In addition, [REDACTED] explained that the Petitioner's "ability to statistically analyze and interpret the data helped the team to scientifically validate the efficacy of [REDACTED]" which "is currently in beta-testing with several fire departments." Our RFE requested additional information and evidence to demonstrate her specific roles and contributions to the [REDACTED] program and [REDACTED] grant projects.

In letters responding to our RFE, the Petitioner's colleagues discuss her participation in the [REDACTED] fire safety projects. For instance, [REDACTED] indicates that when she was a graduate student in February 2008, the Petitioner "participated in, and was a leading member of, the research team during [REDACTED],"¹⁰ Similarly, [REDACTED] asserts that the Petitioner "lead the research team during [REDACTED] conducted on [REDACTED] . . ." For perspective on the Petitioner's role in this project, the RFE response includes a [REDACTED] technical report entitled "[REDACTED]"¹¹ The "Acknowledgements" section of the [REDACTED]

⁸ The record reflects that the Petitioner performed graduate and postdoctoral research at [REDACTED] from June 2008 to January 2014. In addition, from January 2014 until July 2014, she was employed as an adjunct professor at [REDACTED]. Subsequently, from July 2014 to January 2015, she worked as a consultant and research and development scientist for [REDACTED] in New Jersey. In September 2014, she returned to [REDACTED] as a visiting assistant professor until December 2014.

⁹ The Petitioner submits information indicating that [REDACTED] became [REDACTED] in 2015.

¹⁰ In his initial letter, [REDACTED] stated that the Petitioner "assisted the [REDACTED] team during [REDACTED]"

¹¹ The authors of the [REDACTED] report, [REDACTED] and [REDACTED] stated: "[REDACTED]"

report lists several organizations and fifty individuals who played a role in the experiments. It identifies [REDACTED] as “[t]he key organization to making this happen,” and mentions [REDACTED] for its “role in documenting the structure and monitoring the weather and wind conditions during the experiments.” The third paragraph under “Acknowledgments” states that [REDACTED] led [REDACTED] efforts, and that the principal members of his team included [REDACTED] the Petitioner, and three others. While the [REDACTED] report shows that she was a member of the team that assisted in documenting the structure and monitoring the weather and wind conditions, it does not establish her role as a substantial contributor to the extent that she should be credited with the success of the overall project or any interest that it generated.

In his letter, [REDACTED] notes that the Petitioner recently published an article based on her follow-up research relating to the aforementioned experiments.¹² He states that in [REDACTED] 2017, she published a paper on [REDACTED] tactics to create safer conditions for [REDACTED] entitled [REDACTED]

[REDACTED] in [REDACTED] We note that this article, written by [REDACTED] and the Petitioner, was published well after she filed the Form I-140 on May 11, 2015.¹³ The Petitioner’s RFE response includes additional research articles she coauthored, but they have not yet been published or presented. Regardless, the record does not include sufficient evidence to demonstrate that her recent and forthcoming publications have generated positive interest among relevant parties or reflect a record of success in her area of research.

Similarly, the Petitioner offers a [REDACTED] 2017 [REDACTED] paper; a [REDACTED] 2016 [REDACTED] speaking engagement; and emails from 2016 and 2017 inviting her to publish and present her work, and to perform peer review, all of which post-date the filing of the Form I-140. While the regulation at 8 C.F.R. § 103.2(b)(1), (12) requires that eligibility be established at the time of filing, we will consider the additional post-filing evidence of the Petitioner’s accomplishments in evaluating whether she meets this second prong. In this case, however, we find the Petitioner has failed to establish that these presentations and invitations are reflective of a level of success, or interest in her work, that renders her well positioned to advance her proposed research endeavor.

With regard to development of the [REDACTED] module, [REDACTED] and [REDACTED] contend that the Petitioner assisted in conceptualizing and developing the [REDACTED] training methodology. [REDACTED] maintains that the Petitioner’s “teaching experience and leadership assisted the group in conceptualizing [the] web-based interactive training methodology for [REDACTED] He states that

[REDACTED] ” The authors further noted that the experiments were conducted by multiple organizations, including [REDACTED] and [REDACTED] and required “the assistance of many individuals and cooperation of many organizations to plan and execute.”

¹² The RFE response included copies of nine [REDACTED] test reports confirming the Petitioner was one of the individuals who conducted the experiments, which were conducted jointly by the [REDACTED] and the [REDACTED] from May 2008 until October 2011.

¹³ The record does not indicate that the Petitioner published any previous fire safety research studies.

she “completed critical statistical analysis and data interpretation to support development of the [REDACTED] module.” As noted in our appellate decision, while the record includes various articles about [REDACTED] that were written or contributed to by [REDACTED] and [REDACTED] they do not mention the Petitioner or discuss her specific contributions to corroborate the references’ claims that she conceptualized or developed the [REDACTED] training methodology. Although the Petitioner’s colleagues at [REDACTED] contend that she “helped the team to scientifically validate the efficacy of [REDACTED]” the record does not indicate that she has contributed to their published research articles relating to the project. For example, [REDACTED] and [REDACTED] authored an article about [REDACTED] in [REDACTED] entitled ‘ [REDACTED]

[REDACTED] The Petitioner is not listed as an author or identified anywhere in the acknowledgements section of the aforementioned article, and the record does not include any work that she has published regarding her development of the [REDACTED] training tool.¹⁴

While the Petitioner may have provided support and assistance to the [REDACTED] projects and the [REDACTED] training tool, the record does not support the claimed significance of her role in these endeavors. Instead, the record reflects her participation as a graduate student in certain phases of the research process (such as monitoring experimental conditions, testing, and performing statistical analysis and data interpretation). She has not shown, however, that this work with the [REDACTED] amounts to a record of success in her field, that her contributions generated interest among relevant parties, or that this research experience otherwise renders her well positioned to advance her proposed endeavor.

In addition to her fire safety research, several references mentioned the Petitioner’s nanofluids and ferrofluids research at [REDACTED]. For instance, [REDACTED] professor of physics at [REDACTED] stated that the Petitioner’s “research articles are excellent and make important contributions to the technically important field of ferrofluids,” but did not further describe these contributions. Furthermore, [REDACTED] associate professor of mathematics at [REDACTED] asserted that the Petitioner “has extended theoretical models of ferrofluids and made measurements of their essential properties” and that her work “has important applications for the construction of sensors.” In his initial letter, [REDACTED] indicated that the Petitioner’s research findings “have advanced understanding of enhancement in heat transfer rate of ferrofluids that can be used in thermal systems.” 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 affected sensor construction methodologies, have been utilized in the development of thermal systems, or otherwise reflect a record of success in this area of research.

In response to our RFE, [REDACTED] points to the Petitioner’s articles about ferrofluids in [REDACTED] and [REDACTED]. He attests that her studies “advanced our field’s comprehensive knowledge regarding the process of assembling

¹⁴ In his initial letter, [REDACTED] noted that [REDACTED] is “a registered copyrighted computer program,” but the record identifies [REDACTED] rather than the Petitioner, as the copyright author.

particles in response to the magnetic field for a weak dipolar ferrofluid by means of concentration and field strength.” Similarly, ██████ contends that the Petitioner’s findings “offer a substantial improvement towards fundamental understanding of colloidal magnetic fluids’ behavior.” In addition, ██████ notes that the Petitioner’s work adds “a new set of data about the in-field behavior of ferrofluids to the existing body of literature” and “indicates an integration of promising efforts to develop a fundamental understanding of ferrofluids and their characterization.”

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 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 some research during her career at ██████. She has not shown, however, that her work has been frequently cited by independent researchers or otherwise served as an impetus for progress in the field, that it has affected engineering practices, or that it has generated substantial positive discourse in the broader research community. Nor does the evidence demonstrate that the Petitioner’s work otherwise constitutes a record of success in her area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

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

The Petitioner states that her “continued work in the United States in the field of fluid mechanics and heat transfer warrants approval.” She asserts that “it is highly unlikely that other workers in the United States would share [her] unique combination of skills, and . . . that any such labor market could be effectively tested through the labor certification process.” The Petitioner also contends that her research in two areas, fluid mechanics and heat transfer, “is analogous to a combination of jobs that would render labor certification highly impractical in her case” and that it would be difficult “to articulate the requirements of such a position in a labor certification.”¹⁶

While some of the Petitioner’s knowledge and experience may exceed the minimum requirements for her occupation and therefore could not be easily articulated on an application for labor certification, she has not demonstrated, as claimed, that she presents benefits to the United States through her proposed endeavor that outweigh those inherent in the labor certification process. The Petitioner has not shown an urgent national interest in her research, nor has she demonstrated that she offers

¹⁵ For instance, her CV listed six publications she authored while at ██████ from 2006 until the petition’s filing date in May 2015.

¹⁶ 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.

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 she meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has not demonstrated error in our previous decision. Further, she has not established that she meets the framework set forth in *Dhanasar* to show eligibility for the discretionary national interest waiver, nor do we find that an exercise of discretion would be warranted in this instance.

ORDER: The motion is denied and the petition remains denied.

Cite as *Matter of N-S-M-K-*, ID# 262667 (AAO May 30, 2017)