



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

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

MATTER OF S-P-P-

DATE: OCT. 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an academic physician and researcher specializing in neonatology, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

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

On appeal, the Petitioner submits additional evidence and asserts that he is eligible for a national interest waiver because he "has distinguished himself from his peers to such an extent that the benefits of testing the U.S. labor market are outweighed by the benefits [the Petitioner] provides this nation via his work as a highly skilled neonatologist and influential medical researcher." In August 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, he provides further evidence and maintains that he is eligible for a national interest waiver.

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. . . . [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,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states 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.

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) (*NYS DOT*).

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 Petitioner qualifies as a member of the professions holding an advanced degree.³ 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 working as a neonatology fellow and house staff at the [REDACTED]. In response to our RFE, the Petitioner indicates that he is "currently on the teaching faculty at the [REDACTED] as an Assistant Professor in the Division of Neonatology."

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that his work is aimed at "advancing the medical field's ability to treat sick newborns" and that he intends "to conduct several clinical studies along with top of the line neonatal care to sick neonates." With respect to his clinical research, the Petitioner contends that he will study the "effects of optimal nutrition in extremely low birth weight infants on neurodevelopmental outcomes," "antibiotic stewardship in chorioamnionitis," and the "physiology of cerebral circulation." He further states that he plans to "work extensively on reducing the incidence of bronchopulmonary dysplasia in our NICU [neonatal intensive care unit] and publish our work." In addition, the Petitioner mentions his plans for a study of the NICU's [REDACTED] care program. The record includes a "Letter of Intent" relating to his Request for Grant Application which seeks funding for his proposed research project to evaluate the effectiveness and safety of the [REDACTED] care program at [REDACTED] at [REDACTED].

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

³ The Petitioner received a bachelor of medicine and a bachelor of surgery degree from [REDACTED] in India (2008) and a master of public health degree from [REDACTED] in Illinois (2010).

⁴ Previously, he trained as a pediatric resident at [REDACTED] from July 2010 through June 2013.

⁵ [REDACTED] is a teaching hospital affiliated with the [REDACTED].

The Petitioner states that “preterm birth is the greatest contributor to infant death” in the United States, is “a leading cause of long-term neurological disabilities in children,” and imposes “serious financial strain on both out-of-pocket losses [for] families and on the healthcare system more generally.” We find that the Petitioner’s proposed work as a neonatal researcher, professor, and physician has substantial merit.

To evaluate whether the Petitioner’s work satisfies the national importance requirement, we requested evidence documenting the “potential prospective impact” of his work. His response to our RFE includes an article in the [REDACTED] about [REDACTED] approach to assisting opioid-dependent mothers and their infants, and the hospital’s [REDACTED] care program. This article indicates that [REDACTED]

[REDACTED] The Petitioner also submits an article from the [REDACTED] website that discusses increases in maternal opioid abuse and neonatal abstinence syndrome in the United States. In addition, he provides an article from [REDACTED] that describes a study in which researchers at the [REDACTED] found that the United States has a greater link between low birth weight and lower income and education levels than other developed countries.

The record also contains letters from physicians and professors of medicine discussing the Petitioner’s proposed research concerning neonatal care improvements and its potential benefit to our nation’s healthcare system. For instance, [REDACTED] a professor of pediatrics at [REDACTED] indicates that the Petitioner’s study of perinatal asphyxia-induced cerebral vascular dysfunction and endogenous protection “could result in new approaches for prevention and treatment of Hypoxic-ischemic encephalopathy (HIE), [] one of the leading causes of cerebral palsy.” Additionally, [REDACTED] an assistant professor of pediatrics at [REDACTED] states that the Petitioner’s work “has a potential to develop therapeutic interventions” for infants suffering from cerebral circulation disorders. The record also establishes that the proposed benefit of his research has broader implications, as the results from his work are disseminated to others in the field through medical journals and conferences. We find the evidence sufficient to demonstrate that the Petitioner’s neonatology research is of national importance. 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.

With respect to the Petitioner’s proposed care and treatment of patients and academic duties, while these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the neonatology field and healthcare industry more broadly, as opposed to being limited to the patients he serves and his students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical work as a neonatologist and teaching activities as an assistant professor do not by themselves meet the “national importance”

⁶ The article further states that “[REDACTED]”

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.

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 submitted documentation of his published articles, conference presentations, professional memberships, academic credentials, and staff evaluations. He also offered reference letters discussing his medical training and research projects.⁷ In response to our RFE, he provides a statement describing his past research and current work at the [REDACTED] an article he published in [REDACTED] a conference presentation confirmation, documentation of his peer review activities, and a research project proposal.

The Petitioner maintains that his medical degree, master's degree in public health, medical training at [REDACTED] board certification as a pediatrician, low patient complication rate, role as chief resident instructing other hospital staff, and years of clinical experience render him well positioned to advance his endeavor. Because the Petitioner's proposed clinical and teaching duties do not meet the first prong of the *Dhanasar* framework, our analysis under this prong will focus on whether he is well positioned to advance his proposed research.

With respect to his neonatal research, the Petitioner asserts that his work "has been published in high ranking medical journals and he has also traveled to different scientific meetings to present his research and to disseminate his findings to the greater medical community." In letters supporting the petition, several medical professors discussed the Petitioner's research aimed at improving neonatal care. For example, [REDACTED] professor at [REDACTED] indicates that the Petitioner performed a study examining the use of glycerin suppositories in low birthweight infants and their adverse side effects such as anal irritation, rectal mucosal injury, and rectal bleeding. [REDACTED] states that the Petitioner "found that glycerin suppository use was associated with increased number of days to reach full feeds and increased hospital stay. This work is important because it highlighted the need for further prospective studies to evaluate its safety and efficacy."

[REDACTED] a professor of pediatrics at [REDACTED] indicates that Petitioner evaluated "new approaches for prevention and treatment of post-asphyxia perinatal brain injury." [REDACTED] contends that the Petitioner's work entitled "[REDACTED]" [REDACTED] as it addresses "a serious healthcare problem and the single most prominent cause of death and cerebral palsy in newborns." While [REDACTED] and [REDACTED] note the importance of the Petitioner's research projects, they do not offer specific examples of how the Petitioner's findings have generated positive interest among relevant parties, have been implemented as part of NICU treatment programs, or otherwise reflect a record of success in his area of research.

⁷ We discuss only a sampling of these letters, but have reviewed and considered each one.

In addition, [REDACTED] clinical assistant professor of pediatric and adolescent medicine at [REDACTED] states that the Petitioner's "review article entitled [REDACTED] [REDACTED] further indicates that he "utilized this important research numerous times in my own practice." Furthermore, [REDACTED] assistant professor of pediatrics at [REDACTED] contends that the Petitioner's "work on teenage pregnancy and prenatal drug exposure" has "provided others with a very useful tool for the management of such cases." Although [REDACTED] and [REDACTED] assert that they have relied on the Petitioner's work, the record does not document that his findings have been utilized beyond his coworkers from [REDACTED] and the [REDACTED]

The record demonstrates that the Petitioner has conducted, published, and presented research during his medical career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, 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. The Petitioner has not shown that his research has been frequently cited⁸ by independent neonatologists 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 evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research.

With regard to the Petitioner's peer review activities, his response to our RFE contains documentation indicating that he agreed to review a manuscript submitted to [REDACTED]. Additionally, he offers emails thanking him for reviewing manuscripts provided to [REDACTED]. The Petitioner has not documented the reputation of the aforementioned journals or offered other evidence demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed research endeavor. The record does not show that the Petitioner's occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance neonatology research.

In sum, 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 rise to the level of rendering him well positioned to

⁸ The appellate submission includes an article entitled [REDACTED]. Although this article discusses the limitations of popular bibliometric indicators, such as the h-index and the impact factor, and concludes that those indicators are not reliable in making "accurate between-field comparisons," it does not undermine the value of citations as one of the tools for assessing clinical research performance. For example, the article states that "[c]itation analysis is widely used in the assessment of research performance in the medical sciences."

advance his proposed endeavor of conducting clinical research aimed at improving medical care for neonates. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, 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

As explained above, 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. Here, the Petitioner claims that he is eligible for a waiver due to his knowledge, skills, and accomplishments, and based on "a critical national shortage of neonatologists."⁹ However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

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 S-P-P-*, ID# 571944 (AAO Oct. 23, 2017)

⁹ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.