



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

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

MATTER OF H-W-N-

DATE: SEPT. 25, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an epidemiologist, 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 the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and argues that she is eligible for a national interest waiver due to her skills and accomplishments in human immunodeficiency virus (HIV) epidemiology. In June 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, she provides further evidence and contends that she 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. . . . [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.

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

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*).

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.

The Petitioner has worked as an epidemiologist and program officer for the [REDACTED] since March 2012. She indicates that she is "directly responsible for monitoring data coming in from 10 large CDC [Centers for Disease Control and Prevention]-funded HIV prevention projects in [REDACTED]." The Petitioner further states that she "is tasked with synthesizing HIV testing data from multiple partners in the field, analyzing it, presenting to stakeholders and reporting it back to the CDC."

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to continue her work as an epidemiologist in the [REDACTED] HIV/STD (sexually transmitted diseases) prevention program. She indicates that this program focuses on expanding HIV prevention and control interventions in [REDACTED]. Her work involves data management, monitoring HIV testing grantees, and evaluating grantees' effectiveness at providing preventive services. The Petitioner further explains that her tracking of trends of the HIV epidemic enable her organization to direct its program efforts based on data-driven decisions. In addition, her projects involve securing additional funding to increase the HIV prevention program's capacity to implement more interventions for at-risk populations.

The record includes four scientific articles that discuss the benefits of HIV prevention programs and screenings, and the significant lifetime medical cost savings associated with early diagnosis and treatment. For example, the Petitioner offers an [REDACTED] 2015 article in *Medical Care* entitled "[REDACTED]." This article concludes that "[t]he economic value of HIV prevention in the U.S. is substantial given the high cost of HIV disease treatment." We find that the Petitioner's proposed work aimed at ensuring that [REDACTED] high-risk populations receive effective HIV prevention interventions has substantial merit.

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

³ The Petitioner received a master of health science degree from [REDACTED] in 2008.

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, she states that her work for the [REDACTED] HIV/STD prevention program "is actively disseminated in the public domain and is generalizable to other jurisdictions having a similar HIV epidemic." For instance, the Petitioner indicates that she has been invited to present her "findings at several national conferences" whose audiences include "other health department staff, program managers, academia, emergency physicians, preventative medicine specialists and STI [sexually transmitted infections] [healthcare] providers."⁴ In addition, she asserts that the success of [REDACTED] "program in HIV prevention and control not only has national importance, but has implications for the global fight against HIV as the disease has ravaged many nations all over the world."

The record establishes that the proposed benefit of the Petitioner's public health research has broader implications, as her findings are disseminated to others in the field through medical conferences. Accordingly, we find the evidence sufficient to demonstrate that her proposed work to advance national HIV strategy goals through dissemination of her findings to others in the field and generalization of her work to other municipalities is of national importance. As the Petitioner has documented both the substantial merit and national importance of her proposed endeavor, she meets the first prong of the *Dhanasar* framework.⁵

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 her résumé and four reference letters discussing her education, public health experience, and HIV prevention projects. In response to our RFE, the Petitioner provided an updated résumé, documentation of two CDC-funded HIV prevention grants awarded to [REDACTED] technical reviews of two [REDACTED] grant applications, a CDC HIV funding opportunity announcement, [REDACTED] annual HIV epidemiological profile (2015), and a chart from CDC entitled "State-Level Estimates of HIV Incidence, Prevalence, and Undiagnosed Infections."⁶

⁴ The record reflects that the Petitioner has presented her findings at medical conferences such as the Annual Meeting of the [REDACTED] and the [REDACTED]

⁵ Unlike her presented research, the Petitioner has not established that her HIV data monitoring and grant management projects for [REDACTED] would impact the epidemiology field and healthcare industry more broadly, as opposed to being limited to the municipality she serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's program administration work for [REDACTED] HIV intervention projects does not alone 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.

⁶ The Petitioner's response to our RFE and July 2015 "submission of additional evidence" both list a letter of recommendation from [REDACTED] but the documentation provided does not include his letter.

The Petitioner contends that she is well positioned to advance her proposed endeavor, stating:

I have been able to not only provide ongoing analytic/epidemiologic support and technical expertise to our grantees, but was also able to participate in the design and implementation of the HIV prevention program and secure funding needed for its sustenance and remain actively involved in the rigorous reporting responsibilities required to maintain some of those grants.

While the CDC-funded HIV prevention grants awarded to [REDACTED] list [REDACTED] as principal investigator, they do not identify the Petitioner's role in those projects. Furthermore, the record does not show that HIV programs designed and implemented by the Petitioner have generated positive interest among relevant parties, have been implemented in other cities' health departments, or otherwise reflect a record of success in epidemiology research aimed at HIV prevention.

In letters supporting the petition, public health professionals discussed the Petitioner's experience with HIV/STD prevention and control programs. For example, [REDACTED] a clinical research nurse at the [REDACTED] asserts that the Petitioner "possesses a very well rounded problem-solving approach" and has "showcased some of her work at national conferences such as the [REDACTED] and [REDACTED] [REDACTED]. In addition, Dr. [REDACTED] a research associate with [REDACTED] a social science research firm, discusses the Petitioner's work on expanded HIV testing at emergency departments (EDs) in [REDACTED]. Dr. [REDACTED] notes that the Petitioner's findings "showed that 65% of new HIV diagnoses that were diagnosed by EDs had not been previously tested elsewhere (locally, using public funds), which makes them a crucial partner in HIV prevention work."

[REDACTED] a senior clinical research specialist at [REDACTED] indicates that the Petitioner's "wide repertoire of skills ranges from research, program design, implementation monitoring and evaluation as well as proposal development, grant management, capacity building, clinical quality management, performance measurement, and data analysis." Furthermore, Dr. [REDACTED] [REDACTED] a former program manager for the [REDACTED] global training initiative at the [REDACTED] in New Jersey, states that the Petitioner has provided "invaluable input in HIV/STD prevention program at the [REDACTED] Health Department" and "has been invited to present her exemplary work on expanded HIV testing activities at national conferences."

The record demonstrates that the Petitioner has conducted and presented research during her career in public health. 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 endeavor. 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 her epidemiology research relating to HIV

prevention has been frequently cited by other public health professionals 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 her work otherwise constitutes a record of success in epidemiology.

In sum, 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 rise to the level of rendering her well positioned to advance her proposed endeavor of epidemiology research and projects aimed at HIV prevention. 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.

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 she is eligible for a waiver due to her training and public health experience. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she 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 she 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 H-W-N-*, ID# 551406 (AAO Sept. 25, 2017)