



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

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

MATTER OF T-D-O-

DATE: AUG. 3, 2018

APPEAL OF NEBRASKA 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 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 petition, concluding that the record did not establish, as required, 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 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of 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 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,

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*).

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.

For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing, the Petitioner was working as a [REDACTED] [REDACTED] for the [REDACTED].⁴ In this role, she works on [REDACTED] projects which are part of the [REDACTED] network.⁵ The [REDACTED] is described by [REDACTED] a program manager at [REDACTED] as “a national resource for surveillance, prevention, and control of emerging infectious diseases.” Specifically, the Petitioner asserts that she uses her “medical knowledge, principles of epidemiology, [and] statistical prowess in an applied fashion to conduct research which aims at preventing and controlling infections nationally, and ensuring patient safety.” Accordingly, we find that the Petitioner's proposed work to advance research on [REDACTED] has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. The Petitioner summarizes her proposed endeavor as follows:

My goal is to become a nationally recognized voice in the field of patient safety and a strong advocate for health equity. I intend to achieve this by continuing research, providing technical guidance, infection prevention expertise, and preventing infection to patient and healthcare workers in a variety of healthcare environments.

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

³ The Petitioner submitted evidence that she holds a Master of Public Health degree from the [REDACTED]. See 8 C.F.R. § 204.5(k)(3)(i)(A).

⁴ On appeal, she submits evidence that she applied for the position of Term-limited Dialysis Infection Preventionist with the same agency.

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. However, we consider information about her position to illustrate the capacity in which she intends to work.

The evidence includes a copy of a September 18, 2014 executive order from President Barack Obama, and the accompanying *National Strategy for Combatting Antibiotic Resistant Bacteria*, which identify the detection and control of antibiotic resistance as a national priority. Regarding the Petitioner's specific role in this effort, [REDACTED] an epidemiologist with [REDACTED] asserts in her letter that the Petitioner's work in the [REDACTED] study [REDACTED] and [REDACTED] will help to "create policies and procedures to reduce [REDACTED] and to support national recommendations on the appropriate use of antimicrobial drugs." Further, [REDACTED] letter states that the proposed work "will lead to improved estimates of the burden of healthcare-associated infections in the U.S., identification of antibiotic use patterns that may be contributing to resistance, and an increased understanding of risk factors for antimicrobial resistant infections." As the Petitioner has documented both the substantial merit and national importance of her proposed work to advance research on [REDACTED] prevention and the control of antimicrobial resistance, we disagree with the Director's determination and find that the record establishes that the Petitioner meets the first prong of the *Dhanasar* framework.⁶

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submits documentation of her academic credentials, professional memberships, unpublished scholarly papers, as well as several reference letters describing her work for [REDACTED] in the community and during her studies. On appeal, she notes that she has already made contributions in the area of [REDACTED] through her work on four [REDACTED] projects at [REDACTED]. Those contributions include contributing to the protocols and workflows of the projects, collaborating with other state health departments and the [REDACTED] and working to generate reports to participating hospitals in Colorado to help them in their efforts to prevent infections. However, the Petitioner has not submitted documentary evidence to demonstrate that her work on these projects has led to the creation of policies and procedures at individual hospitals, within local or state health departments, or at the national level. Nor has she otherwise established that her work constitutes a track record of success regarding the prevention of [REDACTED].

In letters supporting the petition, public health officials and others describe the Petitioner's experience in projects relating to [REDACTED] and antimicrobial resistance. [REDACTED] notes that the Petitioner's contribution to research in these areas "were significant enough that she is a co-author on an upcoming peer-reviewed publication led by [REDACTED] staff." Ms. Janelle states in her letter that

⁶ The Petitioner also proposes to continue her volunteer activities in the area of healthcare disparities by working with non-profit organizations such as the [REDACTED]. The record indicates that the Petitioner has participated in local diabetes and blood pressure check programs and teaches CPR classes. While the evidence establishes that this endeavor has substantial merit, the record does not establish that the Petitioner's activities impact healthcare more broadly, as opposed to being limited to the individuals who attend these community health events. Therefore, without additional documentary evidence of the broader impact of the Petitioner's volunteer activities, they do not meet the "national importance" element of the *Dhanasar* framework's first prong. Similarly, in *Dhanasar*, we held 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.

the Petitioner’s “expertise in extracting clinical information from detailed medical records” contributed to the successful completion of three research projects, including one focused on nursing homes which “can be used to create new local and national policies to reduce [REDACTED] to improve future [REDACTED] research and tracking efforts, and to improve proper use of antimicrobials in nursing homes.” [REDACTED] a Physician Leader with [REDACTED] writes that the Petitioner’s efforts “provide governing bodies measurements of the magnitude and types of [REDACTED] occurring hospital-wide are needed to inform decisions by local and national policymakers and by hospital infection control personnel regarding appropriate targets and strategies for [REDACTED] prevention.”⁷

The record demonstrates that the Petitioner has conducted research and provided analysis during her career in public health. In addition to the letters discussed above, the Petitioner also has submitted evidence that she is a co-author on several papers submitted for publication in scientific journals, as well as an abstract presented at a conference in Africa. However, only one of these manuscripts, referenced by [REDACTED] addressed the subject of her proposed endeavor, [REDACTED] and their prevention and treatment.⁸ Further, since that manuscript has yet to be published, the results of the Petitioner’s work has not been disseminated to others in her field, and thus has not generated interest among relevant parties or substantial positive discourse in the public health community. Therefore, this evidence does not show that the Petitioner has achieved progress towards achieving the goals of this research or that she has a track record of success, factors set forth in *Dhanasar* to determine whether a petitioner is well-positioned to advance the proposed endeavor. *Id.* at 890.

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 rises to a level such that she is well-positioned to advance her proposed endeavor of [REDACTED] prevention and the control of antimicrobial resistance. As the record does not establish that she is well-positioned to advance her proposed endeavor, she has not demonstrated 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 combination of clinical experience and epidemiology skills, as well as her need for unrestricted employment authorization. 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

⁷ Several other letters were submitted by the Petitioner which focused on her volunteer work with non-profit organizations targeting health equity. While not all of these letters are mentioned in this decision, primarily because we find that that aspect of her proposed endeavor does not satisfy the first prong of the *Dhanasar* framework, all were reviewed.

⁸ The Petitioner is one of multiple authors listed on a paper claimed to have been submitted to the [REDACTED] [REDACTED] “Changes in the prevalence and distribution of healthcare-associated infections in U.S. hospitals between 2011 and 2015.”

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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 that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of T-D-O-*, ID# 1422412 (AAO Aug. 3, 2018)