



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

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

MATTER OF S-B-

DATE: AUG. 8, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an education researcher and assistant professor of journalism and communication, 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 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 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 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

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*).

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 remaining 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 regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” The denial decision stated that “since the petitioner did not submit this required evidence, USCIS must deny the Form I-140.” At the time of filing and again with the appeal, the Petitioner offered two properly signed and fully executed ETA-750B forms. Accordingly, the Director’s finding on this issue is withdrawn. As discussed below, however, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

At the time of filing, the Petitioner was a visiting assistant professor of bibliography at the [REDACTED]. She later accepted a position as an assistant professor of journalism and communication at [REDACTED].

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that she intends to continue her “research and development relating to strategies for improving the educational success of remedial university students.” She further explains that her research is aimed at “developing teaching techniques and strategies which counter the negative effects of low information literacy skills in remedial undergraduate students.” In addition, she asserts that she plans to collaborate “with research partners at other U.S. higher education institutions to explore national trends in the information literacy skills of remedial undergraduate students” and present her “research at national conferences focused on ‘solving’ the remedial education problem.”

With the petition, the Petitioner presented articles that discuss the “Reach Higher” educational initiative aimed at expanding college opportunity, U.S. statistics for first-year undergraduate

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

³ The record reflects that the Petitioner received a Ph.D. in communication and information science (May 2015) from [REDACTED].

remedial course enrollment, and recommendations and actions for remedial education reform. She also provided information from the [REDACTED] addressing “the gap between enrolling in college and being ready for college” in the United States. The record also includes a report from the [REDACTED] describing concerns regarding the effectiveness of U.S. colleges and universities’ remedial education courses. Lastly, the Petitioner submitted a report from the [REDACTED] mentioning the benefit of improved strategies for organizing and delivering remedial programs. We find that the Petitioner’s proposed research aimed at improving the educational success of remedial university students has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of her work. In addition to the articles described above, her evidence includes letters of support from U.S. academics discussing the potential benefits of her research to the U.S. education system and economy. For instance, [REDACTED] Associate Dean of the College of Communication and Information at [REDACTED] asserts that the Petitioner’s “research into the causes and effects of academic underpreparedness and effective remediation for the condition has the potential to affect how all levels of American schooling address this problem.” Furthermore, [REDACTED] professor emeritus of communication at [REDACTED] contends that as “the cost of remedial education becomes more overwhelming for students and the U.S. economy each year,” the Petitioner’s continued research “could contribute to a national solution to this problem” and “benefit both the U.S. education system and the U.S. economy.” In addition, the Petitioner has submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through education journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, we find that she meets the first prong of the *Dhanasar* framework.⁴

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications.⁵ The Petitioner submitted documentation of her published articles, conference presentations, academic credentials, and student awards from her alma mater [REDACTED]. She also offered reference letters discussing her academic accomplishments, work experience, and research projects.⁶ On appeal, she provides a webpage showing the number of downloads of her dissertation, a citation

⁴ With regard to the Petitioner’s teaching duties at her university, while these endeavors have substantial merit, the record does not establish that such course instruction work would impact the field of education more broadly, as opposed to being limited to her students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s teaching duties as an assistant professor 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.

⁵ As previously noted, the Petitioner’s teaching duties do not meet the first prong of the *Dhanasar* framework, therefore our analysis under this prong will focus on whether she is well positioned to advance her proposed research.

⁶ We discuss only a sampling of these letters, but have reviewed and considered each one.

report from [REDACTED] and a letter inviting her to present her work at the [REDACTED] annual conference in February 2018.⁷

With respect to her research contributions, the Petitioner asserts that “[s]he has identified a major obstacle to remedial student learning which is that students cannot progress on the university level without comprehensive information technology and literacy skills.” She further indicates that “she has presented a framework for university faculty members to work together with the information technology experts to enhance the ability of remedial students to succeed.” In addition, the Petitioner states that “[s]he has identified issues of information anxiety and academic hopelessness with remedial students and proposed ways to address those issues in order to improve the potential for success at the university level.”

In letters supporting the petition, several professors discussed the Petitioner’s research that focused improving remedial students’ chances of success in higher education. For example, [REDACTED] indicates that the Petitioner “discovered early on in her work with remedial students that collaborative efforts were more fruitful in terms of encouraging academic progress than solo endeavors.” [REDACTED] further explains that the Petitioner’s research offers “a solid basis from which to make recommendations – of which there is a clear gap in the scholarly literature examining remedial undergraduate education, making [the Petitioner’s] work both unique and innovative in its depth and in the academic solutions it suggests.”

In addition, [REDACTED], president of the [REDACTED] and a professor of history at the [REDACTED] states: “[The Petitioner’s] doctoral dissertation focuses on how needs-based information literacy instruction can assist remedial students’ success, ultimately aiding in retention and propelling them toward degree completion.” He further contends that the Petitioner’s “philosophy of student-centeredness, one that empowers students and concentrates on the efficacy of personalized learning, is transformational and one that others would do well to emulate.” Although the aforementioned professors assert that the Petitioner’s work will prove useful, the record does not adequately document that her specific research findings and methods stand to be implemented at various colleges or universities.

The Petitioner’s appellate submission includes a [REDACTED] citation report showing that her article in [REDACTED] has been cited to 11 times and that her article in [REDACTED] has been cited to once.⁸ She does not, however, offer comparative statistics indicating how often other education researchers are cited, nor does the record otherwise demonstrate that her published and presented research constitutes a record of success or a level of interest in her work from relevant parties sufficient to meet this prong. Further, while the Petitioner points to the fact that her work has been downloaded hundreds of times,

⁷ This conference post-dates the filing of the petition. See 8 C.F.R. § 103.2(b)(1), (12). Regardless, we do not find that presentation of her work alone is sufficient to establish that the Petitioner is well positioned to advance her proposed research.

⁸ This report reflects that none of the Petitioner’s remaining articles have garnered citations.

she has not presented evidence illustrating the significance of this number, or establishing that the research has been implemented, utilized, or applauded by those viewing it.⁹

The record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies and university employment. 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 her research has been frequently cited by independent scholars or has otherwise served as an impetus for progress in the field, that it has affected educational strategies at multiple colleges or universities, or that it has generated substantial positive discourse in the broader academic community. Nor does the evidence otherwise demonstrate that her work constitutes a record of success or progress in her area of research.

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 research endeavor. 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 "unique experience and expertise," research contributions, and the impracticality of labor certification, and because "remedial post-secondary education is an urgent national interest." 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 she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

⁹ The downloads of the Petitioner's dissertation and article in [REDACTED] corroborate that she has disseminated her findings, but they are not sufficient to demonstrate a record of success of, or interest in, her research.

Matter of S-B-

ORDER: The appeal is dismissed.

Cite as *Matter of S-B-*, ID# 1405886 (AAO Aug. 8, 2018)