



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

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

MATTER OF C-G-K-

DATE: SEPT. 10, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an alternative medicine researcher and practitioner, 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 contends that he 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) (*NYSDOT*).

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 record reflects that, at the time of filing, the Petitioner was working as director of the [REDACTED] a homeopathic clinical practice in Korea. In addition, he indicates that he was concurrently serving as scholarly director of the [REDACTED]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner states: "My proposed field of endeavor . . . is the use of homeopathy to the field of autism and specifically the link between autism and gastrointestinal dysfunction, skin problems, and liver dysfunction." He asserts that he intends to pursue research "to improve the quality of life and even reverse the damage of the disease known as autism." The Petitioner further explains that his "plans include continuing his research and treatment in these very important and problematic areas in the United States." We find that the Petitioner's proposed research aimed at improving treatment options for autism and investigating that condition's link to other ailments has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. The record includes an article entitled "Sickness is Profitable" from [REDACTED], a website that markets yoga, fitness and wellness products. This article contends that the U.S. healthcare system "ignores holistic healing," "profits more from sickness than health," and "emphasizes drug-based treatment and research," but it does not discuss homeopathic research aimed at autism or the broader implications of such research. As further documentation of his proposed endeavor's potential prospective impact, the Petitioner quotes a letter he provided from [REDACTED] a specialist of general surgery and chief surgeon at [REDACTED] stating:

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

³ The Petitioner presented an academic credentials evaluation indicating that his degree from [REDACTED] in Korea is the foreign equivalent of "a Doctor of Medicine Degree from an accredited college or university in the United States." See 8 C.F.R. § 204.5(k)(3)(i)(A).

I saw all progressions and the great result [the Petitioner] accomplished from the first treatment and perfect cure of the various patient of incurable diseases which he was serving in [redacted] hospital I saw [the Petitioner] was treating mental disease, skin disease (Atopy, Psoriasis), chronic pain, and, furthermore, beside him I could see directly he was remarkably contributing to the improvement of partial function . . . of the patient who had been suffering with Lou Gehrig Disease for 7~8 year [*sic*].

The above statements from [redacted] relate to the Petitioner's past clinical work in Korea rather than his proposed U.S. endeavor to conduct homeopathic research aimed at autism and its link to other medical conditions. With respect to the Petitioner's proposed care and treatment of patients, while this endeavor has substantial merit, the record does not establish that his clinical work would impact the homeopathic medicine field and healthcare industry more broadly, as opposed to being limited to the patients he serves. Without sufficient documentary evidence of its broader impact, the Petitioner's clinical work treating patients does 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. Accordingly, [redacted] statements are not sufficient to demonstrate the national importance of the Petitioner's proposed endeavor.

In addition, the Petitioner's appeal brief references a 2011 study on homeopathy published by Switzerland's government that he claims affirms the effectiveness of homeopathic treatment and its cost-effectiveness. He also references information from [redacted] indicating that "only 2.1%" of the U.S. population uses homeopathy. The record, however, does not include a copy of the aforementioned reports to corroborate this information. Furthermore, the Petitioner does not sufficiently explain how these reports demonstrate that his proposed research stands to advance U.S. healthcare interests or to otherwise have broader implications consistent with a finding of national importance.

The relevant question is not the importance of the field, industry, or cause for which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.⁴ Here, the record does not sufficiently explain or document the potential prospective impact of the Petitioner's

⁴ In response to the Director's request for evidence, the Petitioner stated: "I also intend to produce and distribute homeopathic remedies in the United States to American and world-wide customer. This will create American jobs, because I will need American workers to help with the production, bottling, marketing, and sale and distribution of the products." The Petitioner, however, has not shown that the level of projected staffing for his business is sufficient to support a finding that his proposed endeavor has national importance based on its potential to employ U.S. workers. Regardless, the Petitioner's appeal focuses on his proposed research and does not provide arguments or evidence addressing the issue of job creation.

specific proposed endeavor to support a finding that it has national importance. Accordingly, he has not met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his academic credentials, physician license, professional memberships, medical training, conference presentations, and book entitled *Atopy, Finding Answer from European Medicine*.⁵ He also submitted his curriculum vitae, a “Research and Business Plan,” a certificate of business registration (Korea), and three reference letters from colleagues in Korea discussing his research experience and projects.⁶

The Petitioner contends that he has devoted his “career to the study of homeopathy” and that he is “a pioneer in the field.” In addition to the aforementioned book, the Petitioner asserts that he has authored three others relating to homeopathy or autism, but the record does not include evidence to corroborate his claim.⁷ Furthermore, the Petitioner maintains that he has “worked with and will continue to work with the top homeopathic researchers and physicians in the United States. . . . My connection with other top researchers in the field attests to the fact that I am well positioned to advance my field once I get to the United States.” The record, however, does not include any letters of support from researchers, physicians, potential customers, users, or investors in the United States expressing their interest in the Petitioner’s proposed endeavor to conduct homeopathic research aimed at autism and its link to other medical conditions.

In letters supporting the petition, the Petitioner’s colleagues in Korea discussed his homeopathic treatment methods. While complimentary of the Petitioner’s work, their uncorroborated statements are not sufficient to support his claim that his “publications are used by doctors as well as laypersons, because they provide a foundational knowledge set for homeopathy.” For example, [REDACTED] a neurosurgery specialist with the [REDACTED] asserts that the Petitioner’s “[REDACTED] among top tier selling books related to [REDACTED]” and that “[a]ll members of the [REDACTED] community are administering this treatment.” The record, however, does not include sales figures from the book’s publisher or other evidence to corroborate these claims. In addition, [REDACTED] a professor in the department of internal medicine at [REDACTED] in Korea, contends that the Petitioner’s “published books are currently used by doctors and even ordinary

⁵ The documentation relating to this book includes only its cover page and a brief summary. The book’s International Standard Book Number (ISBN) (a unique numeric commercial book identifier) was not included in the submitted documentation.

⁶ Two of these three letters did not include an address, a telephone number, or any other information through which the references can be contacted. The lack of proper contact information as a means for verifying the information in the references’ letters diminishes the probative value of their statements.

⁷ The Petitioner also indicates that he has “translated books from English into Korean so that the Korean population can enjoy learning from the international community about homeopathic breakthroughs.” The record contains documentation of these translated books which were authored by [REDACTED] and [REDACTED]

people studying the Homeopathy as a textbook in Korea,” but the record does not adequately document utilization of his publications or methodologies at medical centers, homeopathic clinics, or educational institutions, or show how they otherwise render him well positioned to advance his proposed endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research during his medical career and worked on homeopathic treatment methods for various diseases. 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 medical studies 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. Here, the Petitioner has not shown that his research has been frequently cited by independent researchers or otherwise served as an impetus for progress in the field, that it has affected treatment methods outside of the institutions where he has worked, 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.

The evidence offered in the present matter is insufficient to show that the Petitioner’s medical research constitutes a record of success or progress in his field, or has garnered degree of interest in his work from relevant parties, that would rise to the level of rendering him well positioned to advance his proposed endeavor aimed at improving treatment options for autism and investigating that condition’s link to other ailments. 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 expertise in homeopathy and the impracticality of labor certification, and because his work will advance the medical field and improve Americans’ healthcare. However, as the Petitioner has not adequately documented the national importance of his endeavor under the first prong of the *Dhanasar* framework, or established that he is well positioned to advance his proposed endeavor as required by the second prong, 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.

Matter of C-G-K-

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

ORDER: The appeal is dismissed.

Cite as *Matter of C-G-K-*, ID# 1501047 (AAO Sept. 10, 2018)