



U.S. Citizenship
and Immigration
Services

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

MATTER OF M-Y-A-

DATE: APR. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a physician working in the area of pediatric critical care, 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 submits a brief asserting 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, 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

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*).

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. 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.

At the time of filing, the Petitioner was serving as a pediatric critical care medicine fellow at [REDACTED] in [REDACTED] Ohio. In response to the Director's request for evidence (RFE), the Petitioner indicated that upon completing this fellowship in June 2018, she planned to continue her medical career as a clinician scientist at [REDACTED].³

A. Substantial Merit and National Importance of the Proposed Endeavor

In an April 2017 letter accompanying the Form I-140, the Petitioner indicated that she intends to continue her work as a clinical physician and pediatric health researcher "to improve healthcare for children who are suffering from illness and debilitating conditions." She further explained that her research is aimed at "respiratory diseases that impact hundreds of thousands of young children, such as Respiratory Syncytial Virus Infection" (RSV) and Community-Acquired Pneumonia (CAP), and that her work will "improve diagnosis and treatment of these diseases."

In response to the Director's RFE, the Petitioner asserted that her "long term goal is to develop community based programs that are designed with a multidisciplinary approach to improving access to affordable, qualitative and accessible health care services for children with chronic conditions." In addition, she stated that she plans to investigate "the modifiable individual and community factors that affect those children with chronic conditions whose health care needs are very different from the general pediatric population. My research would be building a nexus between public health research and critical care outcomes for this very special subgroup of children."

The initial submission offered information about RSV and CAP from the Centers for Disease Control and Prevention (CDCP) and Medscape discussing the prevalence of these diseases in the United States. We find that the Petitioner's proposed clinical research focused on improving medical practices for children with chronic health conditions has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. In addition to the information from CDCP and Medscape, the record includes letters of support discussing the potential benefits of her proposed research. For instance, [REDACTED]

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

³As 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 will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

_____ a research assistant professor in the Department of Pediatrics at _____, asserted that the Petitioner's proposed work will improve "health outcomes of children with chronic conditions, especially those who frequently require admission to a pediatric intensive care unit." The record also includes documentation indicating that the benefit of her proposed research has broader implications, as the results are disseminated to others in the field through medical 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.⁵ The record includes documentation of her curriculum vitae, academic credentials, medical certifications and license, published articles, conference presentations, and residency awards. She also offered reference letters discussing her medical training, clinical work, and research projects.⁶ Upon review of this evidence, we find it does not establish that the Petitioner is well positioned to advance her proposed endeavor of improving medical practices for children with chronic health conditions in the field of pediatric critical care.

In letters supporting the petition, several medical professors discussed the Petitioner's research aimed at advancing treatment for children with RSV and the improving the quality of pediatric critical care. For example, _____ professor of pediatrics at _____ described the Petitioner's research project relating to antibiotics and length of stay in children hospitalized with RSV. He stated that the importance of the Petitioner's "study lies in the fact that inappropriate use of antibiotics has been closely linked to antibiotic resistance and rising healthcare cost." In addition, _____ indicated that the Petitioner's work "showed that unnecessary antibiotic use was associated with prolonged hospitalization." Likewise, _____ associate professor of pediatrics at _____ noted that the Petitioner's work "showed that antibiotic use in confirmed RSV infection prolonged hospital stay without additional impact on outcomes."

In addition, _____ professor of surgery and pediatrics at _____ asserted that the Petitioner "has worked on several quality improvement projects to improve outcomes of critically injured children with acute respiratory failure." He further stated: "[The Petitioner] and her team have developed strategies to reduce iatrogenic fluid overload in this population. Results of her work were recently presented at the _____ conference where she received a lot of commendation for her work."

⁴ With respect to the Petitioner's proposed care and treatment of patients, while these endeavors have substantial merit, the record does not establish that her clinical work would impact the pediatric critical care field and healthcare industry more broadly, as opposed to being limited to the patients she serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a physician 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.

⁵ As previously noted, the Petitioner's clinical 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 While we discuss a sampling of these letters, we have reviewed and considered each one.

Furthermore, [REDACTED] professor of anesthesiology at [REDACTED] and medical director of [REDACTED] and [REDACTED] at [REDACTED] indicated that the Petitioner developed a “Quality Improvement curriculum for her pediatric residency program” and that “this curriculum is still in use today and has led to many resident-led quality improvement projects.”⁷ Although [REDACTED] pediatric residency program has adopted the Petitioner’s Quality Improvement curriculum, the record does not show that this curriculum stands to be utilized beyond this single hospital.

The Petitioner presented two “Resident of the Year” awards for [REDACTED] and a [REDACTED] for her [REDACTED]. These residency awards from [REDACTED] however, are insufficient to show a record of success or a level of interest in her research from relevant parties adequate to meet this prong.

The record demonstrates that the Petitioner has conducted, published, and presented research during her 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 her published and presented work has been frequently cited by independent researchers 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 constitutes a record of success or progress in her area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research 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 education, research experience and accomplishments, and based on the impracticality of labor certification and a “shortage of physician-scientists in the field of pediatric critical care medicine.”⁸ However, as the Petitioner has not established that she meets the first and second prongs 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.

⁷ The Petitioner received her pediatric residency training at [REDACTED] from 2012 until 2015.

⁸ 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.

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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Y-A-*, ID# 2696644 (AAO Apr. 9, 2019)