



U.S. Citizenship
and Immigration
Services

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

MATTER OF A-S-

DATE: APR. 30, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a physician specializing in cardiology, 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 she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us, and we summarily dismissed the Petitioner's appeal. The matter is now before us on a motion to reopen. With the motion, the Petitioner submits further evidence and a letter from counsel asserting that she is eligible for a national interest waiver under the *Dhanasar* framework. We will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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

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*).

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. BACKGROUND

At the time of filing her Form I-140, the Petitioner provided a cover letter stating that, as a cardiologist, she intends to continue her clinical and research work aimed at treating and understanding heart disease. Regarding the first prong of the *Dhanasar* framework, the Director acknowledged that the benefit of the Petitioner's proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. Because the Petitioner had documented both the substantial merit and national importance of her proposed cardiology research, the Director found that she met the first prong of the *Dhanasar* framework.³

Regarding the second prong of the *Dhanasar* framework, the record before the Director included documentation of the Petitioner's curriculum vitae, academic credentials, medical certifications, published articles, conference presentations, and certificates of appreciation from the [REDACTED] acknowledging her participation in the [REDACTED].³ The Petitioner also offered reference letters discussing her medical training, clinical work, and research projects. Upon review of this documentation, the Director determined that the evidence was not sufficient to demonstrate "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."

With respect to *Dhanasar*'s third prong, the Petitioner claimed eligibility for a waiver due to her clinical work, research experience and accomplishments, and based on the impracticality of labor certification and a shortage of cardiologists in the United States.⁴ After considering the Petitioner's arguments and evidence, the Director concluded that she had "not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor

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

³ With respect to the Petitioner's proposed care and treatment of patients, the Director noted that while these endeavors have substantial merit, the record did not establish that her clinical work would impact the cardiology field and healthcare industry more broadly, as opposed to being limited to the patients she serves. Accordingly, the Director concluded that without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a cardiologist did 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.

⁴ 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.

certification.” Accordingly, the Director denied the Form I-140, finding that Petitioner had not met the second and third prongs of the *Dhanasar* framework necessary to qualify for a national interest waiver.

The Petitioner filed an appeal, but did not provide a legal brief or additional evidence. Instead, the Petitioner provided a cover letter, stating in full: “We are hereby appealing the denial of [the Petitioner’s] I-140, as we believe the evidence already provided demonstrates that she meets the three prongs of *Matter of Dhanasar*.” We summarily dismissed the appeal.⁵ The matter is now before us on motion to reopen.

III. ANALYSIS

On motion, the Petitioner asserts that she “noted in the appeal that the evidence already provided met all three prongs” set forth in the *Dhanasar* precedent decision. In addition, she contends: “We were requesting a de novo review of the materials submitted and an assessment of the arguments already made in the original filing and the response to the Request for Evidence. This de novo review was not conducted”

The Petitioner’s motion has not identified new facts supported by documentary evidence that overcome our basis for summarily dismissing her appeal. As noted in our prior decision, the Petitioner’s appeal did not identify any erroneous conclusion of law or fact in the Director’s decision. Her submission did not specifically challenge any of the Director’s findings or point to specific errors in the Director’s analyses or conclusions that she had not met the second and third prongs of the *Dhanasar* analytical framework. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Regardless, as discussed below, the evidence the Petitioner presents on motion does not show that she meets prongs two and three of the *Dhanasar* framework and therefore does not establish eligibility for the benefit sought. She submits a certificate of appreciation from

) thanking her for service as Chief Fellow in the from July 2017 until June 2018; a December 2017 letter and certificate from the National Board of Echocardiography stating that she passed the “Examination of Special Competence in Adult Echocardiography”; and a July 2018 certificate of appreciation from the

In addition, she offers a June 2018 certificate from stating that she “satisfactorily completed postdoctoral education” as a “Fellow in Cardiovascular Disease”; a September 2018 article she coauthored in ; and PowerPoint presentations she gave in 2018 for the and

This evidence, however, post-dates the filing of the petition and does not demonstrate her eligibility for a national interest waiver under the framework set forth in *Dhanasar*. Eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

⁵ The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any conclusion of law or statement of fact for the appeal.”

With the motion, the Petitioner also provides an October 2018 letter from [REDACTED], professor of medicine at [REDACTED] discussing her clinical work and cardiology research presentations. He describes the Petitioner's proficiency in reading and interpreting echocardiograms, her utilization of an intracoronary ultrasound technique to place a stent⁶, and her application of specialized training in interventional cardiology to save patients' lives. As previously noted, the Petitioner's clinical duties do not meet the first prong of the *Dhanasar* framework, therefore our analysis under prong two focuses on whether she is well positioned to advance her proposed cardiology research. With respect to the Petitioner's research, [REDACTED] indicates that she "recently presented some of her work this year at a [REDACTED]" but this conference post-dates the filing of the Form I-140. Regardless, while [REDACTED] mentions that the Petitioner has participated in various medical conferences, he does not identify the research topics she presented or discuss the significance of her findings.

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 cardiology 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.

As explained above, *Dhanasar*'s 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 evidence that post-dates the filing of the petition and information from [REDACTED] are not sufficient to render the Petitioner eligible under the third prong of the *Dhanasar* framework.

IV. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision summarily dismissing her appeal. Furthermore, 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. 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.

⁶ [REDACTED] notes that this technique was first developed by an "operator at Columbia University, but [the Petitioner] was the first to use it in [REDACTED]"

Matter of A-S-

ORDER: The motion to reopen is denied.

Cite as *Matter of A-S-*, ID# 2963665 (AAO Apr. 30, 2019)