



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF M-M-O-

DATE: JAN. 17, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a physician researcher specializing in pathology and cellular biology, 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 submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain 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.

At the time of filing, the Petitioner was a physician researcher in the [redacted] residency program at [redacted] of [redacted] and [redacted]. He indicates that his work there involves conducting translational biomedical research and providing clinical care in pathology and laboratory medicine. Regarding his future plans, the Petitioner's evidence includes a letter from [redacted] offering him "a position as a fellow in Hematopathology" at [redacted] a letter from [redacted] offering him a Molecular Genetic Pathology fellowship in its Department of Pathology, and his recent communications with [redacted] relating to a job opportunity for physician researcher position.⁴ For the reasons discussed below, we find the Petitioner has 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

The Petitioner indicates that he seeks to continue his research "to advance our knowledge of molecular genetic basis of hematological malignancies, to characterize therapeutically targetable pathways and genetic changes and further, to utilize this knowledge for molecular classification and help guide personalized therapeutic strategies." He further states that his immediate "research focus will be on continuing his work on autophagy in platelets."⁵ In addition, the Petitioner asserts: "I wish to expand my study on role of bone marrow microenvironment in treatment-resistant acute myeloid leukemia. Other areas of interest that I have are molecular classification of hematological

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

³ The Petitioner received a Ph.D. in Biochemistry from [redacted] in 2012.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about these positions to illustrate the capacity in which he intends to work.

⁵ The appellate submission includes a copy of his detailed research proposal relating to integrated autophagy regulation and autophagy-based therapeutics design. In blood cancers such as acute myeloid leukemia, modulating autophagy has been proposed as a novel therapy.

malignancies and challenges in verification of targetable mutations identified routinely in a cost-effective manner.” We find that the Petitioner’s proposed research aimed at understanding and treating hematological malignancies such as acute myeloid leukemia has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes letters of support discussing how the Petitioner’s proposed work stands to advance hematological cancer research in the United States. For instance, [REDACTED] in Cancer Research at [REDACTED] states that the Petitioner “continues to perform work that provides and extends both our fundamental understanding of the mechanisms behind carcinogenesis and potential cancer therapies.” In addition, [REDACTED] points to “the prevalence of healthcare problems arising from cancers in the United States” and asserts that the Petitioner’s “research carries real and substantial possibilities and implications for developing new approaches to addressing this national and international epidemic.” Similarly, [REDACTED] Professor of Medicine at [REDACTED] contends that the Petitioner’s research “will help to lessen the burden of cancer, the second leading cause of death in the USA, which directly and indirectly impacts a substantial proportion of American citizens.” Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, 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 his proposed research, we find that he 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 record includes his curriculum vitae, academic records, published and presented work, and documentation of numerous articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in cancer research and his past record of success in that field.

We find that the Petitioner’s past experience renders him well positioned to advance his proposed endeavor. Multiple expert references identify specific examples of how the Petitioner’s research on the retinoblastoma tumor suppression gene (RB) has impacted the field. For example, [REDACTED] indicates that the Petitioner’s “work has provided insight into RB’s role as a tumor suppression gene by demonstrating the importance of the RB/E2F pathway in maintaining genomic integrity of cells.” [REDACTED]

⁶ We note that the Director found that because the Petitioner’s prospective fellowships at [REDACTED] and [REDACTED] School of Medicine involved further medical training, the record did not demonstrate the substantial merit and national importance of the Petitioner’s proposed endeavor. However, in addition to receiving advanced medical training, the Petitioner’s statements and evidence show that he intends to continue his biomedical research in these fellowships. For example, the letter from [REDACTED] specifically mentions the availability of a stipend to present his “[REDACTED]-related research.” In addition, a letter from [REDACTED] of Pathology and Laboratory Medicine at [REDACTED] states that the Petitioner plans to continue his “research initiatives while participating in a fellowship in Hematopathology at the [REDACTED].”

further explains that this work has “paved the way for advances in studies of developmental biology and the intricacies of cell cycle regulation.” In addition, Professor of Biology and Genetics at states that the Petitioner’s research relating to RB and activator E2F transcription factors provided “seminal observations in the molecular basis of cell cycle regulation, proliferation, and terminal differentiation of cells.”

Furthermore, Professor of Lab Medicine and Pathobiology at the asserts that the Petitioner “showed a previously unknown function of E2F7 and E2F8 in regulation of physiological polyploidy in hepatocytes, megakaryocytes and trophoblast giant cells. These findings have long lasting implications in developmental and cell biology as well as cancer biology.” Additionally, indicates that the Petitioner “has published his key observations in *Nature Cell Biology* and *Developmental Cell* . . . ; and has been cited extensively on these matters by other experts and scientists in the field.” As corroborating documentation regarding the significance of his work, the Petitioner provides citation evidence showing that his published work has been frequently cited by independent researchers,⁷ and that the rate at which his work has been cited is high relative to others in his field. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner’s experience and expertise in his field, published work, citation evidence, record of success contributing to various research projects, and progress in cancer research position him well to advance his proposed endeavor. Accordingly, we find 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. As a physician and biomedical researcher, the Petitioner possesses considerable experience and expertise in both biochemistry and pathology. The record also demonstrates the widespread benefits associated with research progress in understanding and treating hematological malignancies. In addition, the Petitioner has documented his past successes in advancing research relating to understanding the biology of cancer and publishing influential research findings. Based on the Petitioner’s track record of successful research and the significance of his proposed work to advance U.S. healthcare interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

⁷ For instance, the Petitioner’s appellate submission includes a citation index from Google Scholar indicating that his top three articles have been cited to an aggregate of 305 times.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of M-M-O-*, ID# 1901484 (AAO Jan. 17, 2019)