



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

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

MATTER OF H-P-

DATE: JUNE 25, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a biomedical materials developer, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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, and a subsequent motion, concluding that the Petitioner had not established he qualified for classification either as a member of the professions holding an advanced degree or as an individual of exceptional ability.

The Petitioner appealed the matter to us, and we dismissed the appeal.<sup>1</sup> The matter is now before us on combined motions to reopen and reconsider. With the motions, the Petitioner submits additional documentation and a brief asserting that he is eligible for the EB-2 classification and for a national interest waiver.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

## I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and 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.

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<sup>1</sup> *See Matter of H-P-*, ID# 1730648 (AAO Nov. 8, 2018).

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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, 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.<sup>2</sup> *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.

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<sup>2</sup> 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*).

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 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.<sup>3</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

The record includes the Petitioner's degree (August 1999) from [redacted] University in South Korea and an academic credentials evaluation from [redacted] indicating that the aforementioned degree is the foreign equivalent of bachelor's degree from an accredited institution of higher education in the United States. The Petitioner also previously submitted two August 2017 "Certificate(s) of Career" from [redacted], and [redacted], that list his work experience at those companies.

In our previous decision, we concluded that the aforementioned career certificates did not offer sufficient information to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in biomedical materials engineering and alloy development to constitute the equivalent to an advanced degree in that specialty. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).

With the motion, the Petitioner presents two new "Certificate(s) of Career" from [redacted] [redacted], and [redacted] listing the specific duties he performed for those companies. In addition, these updated certificates indicate how the Petitioner divided his time among various job

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

responsibilities and specify the amount of time he devoted to biomedical materials engineering and alloy development. We find that these certificates from [redacted] and [redacted] [redacted] Offer sufficient information to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in biomedical materials engineering and alloy development to constitute the equivalent to an advanced degree in that specialty. Accordingly, the Petitioner has established that he qualifies for classification as a member of the professions holding an advanced degree.<sup>4</sup>

#### B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. Because the Director's decisions did not consider the Petitioner's evidence and arguments relating to *Dhanasar's* three-part analytical framework, we are remanding for the Director to analyze that documentation and make a determination as to whether the Petitioner has demonstrated eligibility for the benefit sought.<sup>5</sup>

### III. CONCLUSION

We are therefore remanding the petition for the Director to apply the *Dhanasar* analytical framework to make a determination as to 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. 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).

**ORDER:** The motion is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.

Cite as *Matter of H-P-*, ID# 3606957 (AAO June 25, 2019)

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<sup>4</sup> Because the Petitioner qualifies for the underlying visa classification as a member of the professions holding an advanced degree, we need not consider whether the record establishes his eligibility as an individual of exceptional ability.

<sup>5</sup> We note that the Director's October 2017 decision stated: "Since [the Petitioner] does not qualify for the [EB-2] classification, it cannot be concluded that he is well positioned to advance the endeavor." However, as discussed earlier, the analysis of evidence under any of the prongs set forth in the *Dhanasar* analytical framework is a separate determination from whether the Petitioner qualifies for the underlying EB-2 visa classification.