



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF G-O-B-O-

DATE: MAR. 12, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a mathematics teacher and education researcher, 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, and a subsequent motion, 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 additional evidence and 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

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*).

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 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that she intends to continue teaching mathematics⁴ and conducting research relating to methods for improving students' academic progress. She states that she has launched "a research based collaborative network of professionals" to address the Science, Technology, Engineering and Mathematics (STEM) skills gap in the United States. The Petitioner further explains that this collaborative "network is engaged in a global private-public partnership with industry, academic and educational institutions, government, and the nonprofit sector through a virtual platform" and that her proposed work will focus on nations that are ahead of our country in STEM initiatives. The record includes a letter from [REDACTED] Chief Executive Officer of [REDACTED] stating:

[The Petitioner] uses a real-time index . . . of interactive mapping to create collaboration for best practices in STEM subjects among peers in the western world, that are currently ahead of United States in ranking of STEM related subjects (particularly in Mathematics) The ideas and data are then worked on by [the Petitioner] and her research team to improve STEM performances and applications in the U.S. Results will be evaluated and published within the industry.

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

³ The record reflects that the Petitioner received a Ph.D. in teaching, learning, and culture (May 2015) from [REDACTED]

⁴ At the time of filing, the Petitioner was a part time mathematics instructor for [REDACTED] and an adjunct assistant professor at [REDACTED]. In 2017, she began serving as adjunct faculty at [REDACTED] and as part time faculty at [REDACTED]. As 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.

In addition, [REDACTED] asserts that the Petitioner’s proposed research is aimed at identifying best practices that “will form the basis for policy in our education sector.” Furthermore, the record contains information from the U.S. Department of Education discussing its goal of promoting high quality STEM education and explaining the importance of improving instructional quality in mathematics. We find that the Petitioner’s proposed research aimed at improving U.S. students’ educational performance in STEM areas 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 the U.S. Department of Education described above, her evidence includes letters of support from colleagues discussing the potential benefits of her research to our country’s education system. For instance, [REDACTED] a mathematics and science instructional coach at [REDACTED] asserts that the Petitioner’s proposed “work can help create an optimum learning environment by linking mathematics research-based teaching and classroom management to the needs and interests of students.” Furthermore, [REDACTED] contends that the Petitioner’s research relating to the STEM skills gap could contribute to an educational model for governmental and policy experts that “will continuously and prospectively benefit the United States.” In addition, the Petitioner has submitted documentation indicating that the benefit of her proposed educational research has broader implications for the field, as the results are disseminated to others in the field through education 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.⁵

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner.⁶ The Petitioner submitted documentation of her published articles, conference presentations, academic credentials, professional memberships, and a travel grant from her alma mater [REDACTED]. She also offered reference letters discussing her academic accomplishments, work experience, and research projects.⁷ With the appeal, the Petitioner provides evidence indicating that she had papers accepted for presentation at the [REDACTED] (April 2018), [REDACTED] for the

⁵ With regard to the Petitioner’s teaching duties at [REDACTED] and [REDACTED] while these endeavors have substantial merit, the record does not establish that such course instruction work would impact the field of education more broadly, as opposed to being limited to her students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s teaching duties as part of the faculty at [REDACTED] and [REDACTED] do 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.

⁶ As previously noted, the Petitioner’s teaching 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.

⁷ While we discuss a sampling of these letters, we have reviewed and considered each one.

[REDACTED] (July 2018), and [REDACTED] (September 2018).⁸

With respect to her research contributions, the Petitioner asserts that she “has published a lot of research work on mathematics for more than ten years.” In letters supporting the petition, several colleagues discussed the Petitioner’s research that focused on understanding and improving students’ mathematics performance. For example, [REDACTED] associate professor in mathematics education at [REDACTED]⁹, discussed the Petitioner’s Ph.D. research investigating “college students’ conceptions of duality.” [REDACTED] stated: “[The Petitioner] used Action-Process-Object-Duality framework to evaluate duality concept development. She clearly demonstrated that analysis of college students’ views of infinity is a perplexing and intricate process. Her dissertation adds to the important field of research in STEM education.” Likewise, [REDACTED] professor of mathematics education at [REDACTED] asserted that the Petitioner’s “dissertation contributes to the field of research in mathematics education that has a national value in terms of improving STEM education in the country.” Although [REDACTED] contended that the Petitioner’s work “could be used as a springboard to further analyze cognitive obstacles in college students’ understanding of infinity concept,” the record does not show that her specific research findings and methods stand to be implemented at various colleges or universities.

In addition, [REDACTED] associate professor of psychology at [REDACTED] in Russia, indicated that the Petitioner’s work “introduced a new and novel approach to interpreting students’ perceptions of infinity as a process as well as an object. I regarded this as a significant contribution to the field of mathematics.” [REDACTED] however, did not offer specific examples of how the Petitioner’s work has generated positive interest among relevant parties, has been implemented by others in the field, or otherwise reflects a record of success in her area of research.

Furthermore, [REDACTED] a faculty member of the [REDACTED] indicated that she “hosted the [REDACTED] for the [REDACTED] Texas” (2013) and that the Petitioner “received an Outstanding Review for her presentation [REDACTED]” [REDACTED] further stated that the Petitioner presented her paper, entitled [REDACTED] at the [REDACTED] in 2012. The record includes a citation report showing that this article has been cited to eight times, but the Petitioner does not offer comparative statistics indicating how often other education researchers are cited, nor does the record otherwise demonstrate that her published and presented research constitutes a record of success or a level of interest in her work from relevant parties sufficient to meet this prong.

⁸ These three conferences post-date the filing of the petition. See 8 C.F.R. § 103.2(b)(1). Regardless, we do not find that presentation of the Petitioner’s work alone is sufficient to establish that she is well positioned to advance her proposed research.

[REDACTED] was a member of the Petitioner’s doctoral committee.

Regarding the Petitioner's professional memberships, she submitted documentation indicating that she is a member of the [REDACTED]

[REDACTED] and [REDACTED]

Several of these memberships became effective after the Petitioner filed the instant petition on July 25, 2016, and therefore this evidence does not show her eligibility under the second prong of the *Dhanasar* framework at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the evidence does not establish that the Petitioner's memberships represent a record of success in her field or that they are otherwise an indication that she is well positioned to advance educational research.

The record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies and university employment. 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 research has been frequently cited by independent scholars or otherwise served as an impetus for progress in the field, that it has affected educational strategies at multiple schools or universities, or that it has generated substantial positive discourse in the broader academic 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 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 research skills and accomplishments, the impracticality of labor certification, and because of the urgency of helping U.S. students "catch up with countries that are more mathematically advanced." However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong 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.

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

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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 G-O-B-O-*, ID# 2338656 (AAO Mar. 12, 2019)