



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

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

In Re: 5622890

Date: NOV. 13, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a resident physician, 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).

The Director of the Texas Service Center denied the petition, concluding 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 documentation and a brief asserting that he is eligible for a national interest waiver.

In these 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). 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 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, 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.

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

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<sup>1</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*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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

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 a "Resident Physician in Medicine at the [redacted] [redacted].<sup>4</sup> With the appeal, the Petitioner presents a March 2019 letter from [redacted] Chief of the Division of Hematology and Oncology at [redacted] offering the Petitioner an appointment as "Assistant Professor in the Clinical Educator path" set to begin in July 2019.<sup>5</sup> The evidence indicates that, in both of these positions, clinical care duties comprise most of the projected hours, with small amounts of time devoted to academics or research. 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 will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

In a January 2018 letter accompanying the Form I-140, the Petitioner indicated that he intends to continue his research involving the study of [redacted] regimens for patients with acute leukemia. He further stated that his proposed research is aimed at understanding "both the effects of [redacted] and less taxing treatment alternatives." The record also includes a signed statement from the Petitioner discussing his "Future Research Plans." This statement identifies three cancer research projects that he intends to pursue: [redacted].

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

<sup>4</sup> The Petitioner submitted a January 2018 letter from [redacted] Program Director of [redacted] Internal Medicine Residency, stating: "The position of Resident Physician offered [the Petitioner] encompasses three years of clinical training. Because it involves core medical rotations through general inpatient, critical care, and outpatient services in Internal Medicine, such training ensures that the medical graduates are prepared to serve the population after completing their residency. As a Resident Physician, [the Petitioner] is responsible for admitting and safely discharging patients through their hospital stay." A subsequent letter from [redacted] dated December 2018, asserted: "About 90% of [the Petitioner's] time is concerned with catering to the medical needs of the surrounding communities, whereas the rest of his time is devoted to his research. This means he spends an average of around 6-7 hours a week working on his research. However, [the Petitioner] is also given elective time equal to 9 weeks a year where he devotes 40 hours to his research each week."

<sup>5</sup> [redacted]'s letter states that "[t]his is an academic appointment and requires a combination of teaching, patient care, and research, as well as administrative activities, that are necessary for the function of the Department and Division . . . . Your patient care activities will be initially based at [redacted] Hospital and are expected to initially comprise 90% of your professional effort. You will participate in our Oncologic Hospitalist service . . . ."

[redacted],” and “[redacted] Hospital.” In addition, regarding the Petitioner’s research activities at [redacted], the letter from [redacted] indicates that the Petitioner is “expected to participate in retrospective studies relative to hematology and oncology.”

The initial submission offered information about the side effects of [redacted] from American Cancer Society and a webpage from Cancer Research United Kingdom discussing the risk of infection after receiving [redacted]. In addition, the Petitioner provided letters from medical colleagues stating that his research has the potential to improve public health in the United States. The record therefore supports the Director’s determination that the Petitioner’s endeavor has substantial merit.

Regarding the issue of national importance, the Director acknowledged the broader implications of the proposed research, but noted that the Petitioner’s work “primarily involves patient care and treatment.” According to [redacted]’s description of the Petitioner’s position at [redacted], the vast majority of his time is and will be spent on patient care and treatment rather than his proposed cancer research projects. The Director concluded that the limited amount of time the Petitioner intended to devote to his proposed research was insufficient to meet the first prong of the *Dhanasar* framework. While we share the Director’s concern about the amount of time the Petitioner intends to devote to his proposed cancer research, we conclude that the evidence is sufficient to demonstrate this endeavor’s national importance. The issue relating to the amount of time the Petitioner stands to spend on his proposed research is more relevant to *Dhanasar*’s second prong, and therefore we will further address the issue under that prong.

Furthermore, the Director determined that the Petitioner’s clinical work as a resident physician and hospitalist was insufficient to meet *Dhanasar*’s first prong. With respect to the Petitioner’s patient care and teaching duties at [redacted] and [redacted], while these endeavors have substantial merit, the record does not establish that his clinical and instructional work would impact the field of medicine or the U.S. healthcare industry more broadly, as opposed to being limited to the patients he serves and his medical students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s clinical work and teaching activities do not meet the “national importance” element of the first prong of the *Dhanasar* framework.<sup>6</sup>

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, the Petitioner’s clinical work and teaching duties do not meet the first prong of the *Dhanasar* framework. In addition, the Director pointed to the limited amount of time the Petitioner intended to devote to research, indicating that the Petitioner’s work at [redacted] primarily involves patient care and treatment.” However, because the Director acknowledged that the Petitioner’s proposed “research has broader implications for the field” (unlike his clinical care and teaching duties), our analysis under this prong will focus on whether he is well positioned to advance his proposed cancer research. For

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<sup>6</sup> 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.

the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance that research under *Dhanasar*'s second prong.

The record includes documentation of the Petitioner's curriculum vitae, academic credentials, medical certifications and license, published articles, and peer review of three manuscripts. He also offered evidence of articles that cited to his published work<sup>7</sup>, and four reference letters from medical professionals discussing his medical training, clinical work, and research projects.

The aforementioned reference letters focus mainly on the Petitioner's prior research aimed at continuing medical education (CME) programs in Pakistan, factors associated with the incidence of Polio in Pakistan, weight misperception among youth in Pakistan, the efficacy of strategies for treating patients undergoing a thyroidectomy, and the rates of HIV, hepatitis B, and hepatitis C in garbage scavengers in [redacted] Pakistan. For example, [redacted] associate professor of internal medicine at [redacted] University, asserted that the Petitioner's work "has contributed to the identification of factors that affect participation in CME activities."

In addition, with respect to the Petitioner's research relating to youth weight misperception, [redacted] clinical professor of medicine at University of [redacted] explained that the Petitioner found that "[w]hile male participants were more likely to underestimate their weight, female participants suffered from a high rate of overestimation." [redacted] contended that this work "has contributed vital information to the study of weight misperception among children and adolescents."

Regarding the Petitioner's investigation of strategies for treating thyroidectomy patients, [redacted] a cardiothoracic surgeon at [redacted] stated that the results of the Petitioner's work show "that drainage tube insertion following thyroidectomy is not universally necessary." Furthermore, [redacted] a staff physician at [redacted] indicated that the Petitioner's study of the rates of HIV, hepatitis B, and hepatitis C among garbage scavengers in [redacted] "has improved our understanding of risk factors that contribute to disease transmission among garbage scavengers."

While the Petitioner's four references discuss a variety of public health research projects he has undertaken, they do not explain how these past projects position him to advance his proposed research aimed at [redacted], [redacted] the [redacted] for [redacted] patients, or other oncology-related studies. Additionally, the Petitioner has not shown that the limited amount of time his employers indicate that he will devote to research is sufficient to demonstrate that he is well positioned to advance the aforementioned cancer studies. For instance, the

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<sup>7</sup> The Petitioner contends that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as [redacted] and [redacted] position him well to continue to advance his proposed endeavor of [redacted] research." *Id.* at 893. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.

letters from [redacted] and [redacted] both state that patient care activities will comprise 90% of the Petitioner's time.

With the appeal, the Petitioner offers an article, entitled "Research shows professors work long hours and spend much of day in meetings," which discusses "preliminary findings of an ongoing study at [redacted] University" conducted by [redacted]. This article mentions his faculty workload study's initial findings indicating that research "makes up just 17 percent of the work week and 27 percent of weekend work." The article, however, goes on to explain that [redacted]'s "study is only in its preliminary stages, and the findings from what [redacted] calls Phase 1 are anything but conclusive. The sample size is small and participants were not chosen randomly (all 550 [redacted] full-time faculty members were asked to participate but just 30 responded)." Moreover, the Petitioner has not shown that the preliminary findings from this workload study limited to faculty at [redacted] University are relevant to those in the cancer research field.

The record demonstrates that the Petitioner has conducted and published different types of medical research during the training phases of his career, but he has not shown that this work renders him well positioned to advance his proposed cancer research. 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, however, has not shown that his published work has served as an impetus for progress in the oncology field, that it has affected clinical practice for cancer treatment, or that it has generated substantial positive discourse in the oncology research community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in any of his proposed areas of cancer research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established 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. Here, the Petitioner claims that he is eligible for a waiver due to his research and clinical skills and accomplishments, and based on the impracticality of labor certification and furthering U.S. healthcare interests.

The record indicates that the Petitioner attended medical school at [redacted] University of [redacted] in Pakistan and received his Bachelor of Medicine Bachelor of Surgery in 2014. After receiving his license to practice medicine, he began training in internal medicine at [redacted] but did not complete his residency until after the petition's filing date. The Petitioner contends that because he was participating in a medical residency program, he was unable to obtain a permanent labor certification.

While the record indicates that the Petitioner has some experience in public health research, he has not demonstrated that he has sufficient expertise or a record of success in his proposed endeavor of cancer

research. Nor has the Petitioner shown that the national interest in his research contributions is sufficiently urgent to warrant foregoing the labor certification process. Moreover, the evidence from [redacted] indicates that the Petitioner stands to devote only a small percentage of time to his proposed research, and he has not demonstrated that, assuming other qualified U.S. cancer researchers are available, the United States would benefit from this contribution. For these reasons, he has not established that he offers contributions of such value that, on balance, they would benefit the United States at a level sufficient to warrant a waiver of the requirements of a job offer and thus of a labor certification.

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he 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.

**ORDER:** The appeal is dismissed.