



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

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

MATTER OF A-L-

DATE: OCT. 29, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a wireless network security researcher, 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, concluding that the Petitioner 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 a brief asserting that he 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. *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).

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

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*).

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

Although not addressed in the Director's decision, the record demonstrates 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he seeks to continue his communications network research involving security systems that protect wireless networks against threats and vulnerabilities in computer information technology systems. He further stated that his research focuses on using "mobile software agents coupled with traditional security entities such as firewalls and intrusion detection systems." In addition, the Petitioner explained that he intended "to work in collaboration with other researchers in the field of electronic telecommunications systems to develop new and more proactive security applications that will not just counter any form of attack, but will be able to respond to such attacks in real time." Furthermore, he asserted that he planned "to work with the National Institutes of Standards and Technology (NIST) to further develop new tools to improve performance and efficiency of cybersecurity systems." We find that the Petitioner's proposed research aimed at improving wireless network security has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The record includes a U.S. Department of Homeland Security "Incentives Study" entitled "Improving Critical Infrastructure Cybersecurity." This study discusses the need for improved cybersecurity measures to help ensure "the viability of critical infrastructure, and the provision of essential services, under all conditions." In addition, 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 engineering 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.⁴

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

³ The record reflects that the Petitioner received the foreign equivalent of a U.S. baccalaureate degree in electrical/electronics technical education, and has at least five years of progressive post-baccalaureate experience in his specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Because the Petitioner qualifies for the underlying visa classification as a member of the professions holding an advanced degree, discussion of his eligibility as an individual of exceptional ability would serve no meaningful purpose.

⁴ With regard to the Petitioner's proposed work as a physics teacher or electronics instructor, while these endeavors have substantial merit, the record does not establish that this work would impact the fields of physics or electronics more broadly, as opposed to being limited to his students. Accordingly, without sufficient documentary evidence of their broader

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner.⁵ The record includes documentation of his curriculum vitae, academic and training credentials, published work, and citation information from Google Scholar and ResearchGate. The Petitioner also offered an announcement (2018) indicating that he was “selected to join the [redacted] University’s chapter of the National Society of Leadership and Success” and four reference letters discussing his past work.

The Petitioner contends that his academic qualifications, work experience, and research articles indicate that he is well positioned to advance his proposed endeavor. In letters supporting the petition, several of the Petitioner’s former colleagues discussed his prior research and work experience. For example, [redacted] associate professor at [redacted] University of Technology, stated: “Over the period [the Petitioner] has been under my supervision, he has demonstrated a high degree of skills and understandings in his research area, some of his contributions include his participation in departmental seminars centered on themes that are of great importance in the developing of wireless technology.”⁶ [redacted] further noted that the Petitioner “has two publications to his credit,” but the Google Scholar and ResearchGate information he presented does not show these articles have been cited by independent researchers.⁷ Nor has the Petitioner otherwise demonstrated that his findings have been implemented, utilized, or applauded by others in the electrical engineering field.

In addition, [redacted] a college administrator at [redacted] Technology Institute, indicated that the Petitioner worked at that institution as an Instructor of Electronics Technology and an Information Technology Administrator. [redacted] asserted that the Petitioner “used his technical know-how to assist the college in refurbishing some of our scrapped photocopiers and printers.” Furthermore, [redacted] managing director of [redacted] Commercial Enterprises, stated that the Petitioner was employed at that company “as Technical Officer in charge of maintenance and installation works, done on RF (Radio Frequency) communications equipment, both within our workshop and on job sites.” [redacted] further explained that the Petitioner’s “duties centered on repair/maintenance and installation works on RF communications gadgets including Walkie-talkies (transceivers), base radios, mobile radios, and antennae.” Finally, [redacted] principal at [redacted] High School (SNHS), indicated that the Petitioner taught physics and mathematics and her school. [redacted] further noted that the Petitioner helped start SNHS’s science club,

impact, the Petitioner’s proposed teaching duties 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.

⁵ As previously noted, the Petitioner’s proposed teaching duties do not meet the first prong of the *Dhanasar* framework, therefore our analysis under this prong will focus on whether he is well positioned to advance his proposed research.

⁶ The record indicates that the Petitioner was pursuing a “Master of Technology degree,” but did not complete his dissertation in order to earn that degree.

⁷ The information from Google Scholar reflects zero citations for the Petitioner’s article entitled [redacted] [redacted]” With regard to the ResearchGate information,

this documentation indicates that the Petitioner’s article entitled [redacted] [redacted]’ was among 29 articles that cited to [redacted]

[redacted]’ and among 95 articles that cited to [redacted]

[redacted]’ The latter two articles, however, were not authored by the Petitioner. While the Petitioner cited to these two articles in his published work, this does not show the influence of his particular research findings.

mentored students, and represented the school at physics and mathematics workshops. The aforementioned letters from [redacted] and [redacted] however, did not discuss the Petitioner's wireless network security research or his progress in that field.

With respect to the 2018 announcement indicating that the Petitioner was "selected to join the [redacted] University's chapter of the National Society of Leadership and Success," this membership post-dates the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that receiving this membership represents a record of success in his field or is otherwise an indication that he is well positioned to advance wireless network security research.

Regarding the Petitioner's stated plans to work in collaboration with other researchers in the field of electronic telecommunications and with NIST, the evidence does not show a level of interest in his work from these parties sufficient to meet *Dhanasar's* second prong. For instance, the record does not contain communications from scientists at NIST or electrical engineering researchers at U.S. universities discussing their intentions to collaborate with the Petitioner on research projects. Moreover, while the Petitioner provided "Call for Papers" emails sent to his Gmail account, the evidence indicates that he has not published any research articles since July 2014.

The record demonstrates that the Petitioner has conducted, published, and presented research during his academic 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 his research has been frequently cited by independent scientists or otherwise served as an impetus for progress in the field, that it has affected wireless network security practices in the telecommunications industry, or that it has generated substantial positive discourse in the broader electrical engineering community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed 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 education, research skills and accomplishments, and the importance of his field. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he 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 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. 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 A-L-*, ID# 4634995 (AAO Oct. 29, 2019)