



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

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

In Re: 11858269

Date: APR. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,<sup>1</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 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)

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<sup>1</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).

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>2</sup>

## II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> 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.

The Petitioner is a structural engineering researcher who, at time of filing, was a research scholar at the University [redacted]. The Petitioner stated at the time that his “research has been focused on the [redacted] resistance of structures and bridges and the [redacted] of structures.” The Petitioner intends to continue researching [redacted] structural safety.

When the Petitioner responded to a request for evidence, he documented a job offer from the University of [redacted] for a research associate position in which he would “work on a project focusing on the development of [redacted] for [redacted] infrastructure management” and “evaluate new [redacted] technologies.”

More recent submissions from the Petitioner indicate that he is now a postdoctoral fellow at the University of [redacted] where “he is expected to develop new [redacted] monitoring approaches for [redacted] in concrete structures, bridges, corrosion stainless steel dry cask storage systems and [redacted].” As outlined below, we conclude that the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* analytical framework.

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

In denying the petition, the Director acknowledged the substantial merit of the Petitioner’s proposed endeavor but concluded that the Petitioner had not established its national importance. Specifically, the Director stated that the Petitioner “did not provide information to show that [his] assistant professorship will impact the field more broadly.” The Director also stated that the Petitioner did not establish “the importance of [redacted] infrastructure management” or show how [redacted] research “improves or ameliorates . . . problems caused by climate, underfunding, or in what applications it can be used.”

The record shows that the Petitioner’s research involves structural engineering principles with broad applications in architecture and transportation infrastructure. Protecting bridges, railroads, and other structures from [redacted] damage is an issue of national importance. Specific projects have changed from one employer to the next, but each job has been consistent with the proposed endeavor described in the initial filing of the petition. Also, the Petitioner has not been working on individual construction projects with limited impact. Rather, he has published dozens of articles, disseminating research findings throughout the field. The Petitioner’s stated intention is “to develop new [redacted]

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

<sup>3</sup> The Petitioner holds a doctoral degree in “Civil Engineering – [redacted] from [redacted] University [redacted].”

design strategies, which are easy to apply guidelines for designing safe structures under [redacted] [redacted] We therefore withdraw the Director’s conclusion that the Petitioner has not established the national importance of his proposed endeavor.

#### B. Well Positioned to Advance the Proposed Endeavor

The Director determined that the Petitioner did not establish that he is well positioned to advance the proposed endeavor. This determination rested on details of the job offer letter from the University of [redacted] Specifically, the appointment was for one year, with further employment contingent on external financial support. The Director determined that the Petitioner had not submitted documentation to show that support. The Director also noted that the [redacted] job offer involved research into [redacted] and that the Petitioner had not shown that “this endeavor allows for significant time in research of structures and their [redacted]”

On appeal, the Petitioner asserts that the Director emphasized the Petitioner “proposed employment instead of his proposed endeavor,” which “is independent of his job and not contingent upon any particular employment.”

*Dhanasar* listed “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.” *Id.* at 890. The Petitioner asserts that his past progress, success in related efforts, and the interest of others are evident from the hundreds of citations that his published work has received. Letters from individuals at various institutions also discuss the significance of the Petitioner’s work.

The Petitioner’s various employers over the course of this proceeding have been research institutions where the Petitioner has been able to pursue projects that directly relate to the core subjects of his ongoing research inquiry. For example, the position in [redacted] involved research into [redacted] materials “outfitted with a layer of [redacted] for use in [redacted] [redacted]” and the development of “novel algorithms and models for analyzing data collected from [redacted] for use in the analysis of . . . [redacted]” This is consistent with the Petitioner’s proposed endeavor, because the data gathered in this way would shed light on how [redacted] structures withstand [redacted]

The Petitioner’s voluminous publication record speaks to the productivity of his research, both abroad and then in the United States. The record indicates steady and productive progress with respect to the Petitioner’s pursuit of his stated endeavor.

For the above reasons, we conclude that the Petitioner is well-positioned to advance the proposed endeavor.

#### C. Balancing Factors to Determine Waiver’s Benefit to the United States

Reaching the third *Dhanasar* prong, the Director concluded that the Petitioner did not explain how obtaining a labor certification would be impractical, or show how his work would be of national

benefit. The Director stated that “materials about the need for road and bridge improvements . . . do not address [the Petitioner’s] endeavor, nor . . . show how [his] project(s) will be used to ameliorate these concerns and by whom.” We disagree with this conclusion. The record shows that the Petitioner’s work is strongly relevant to issues relating to the integrity of buildings and transportation infrastructure, and has already been used in various ways by other research teams. On balance, we conclude that the national interest in that endeavor outweighs the interests protected through the labor certification process, even given the presence of qualified United States researchers in this field. Based on the Petitioner’s productivity and the influence of his research, we conclude that the United States would benefit from a waiver of the job offer requirement, and thus of a labor certification.

### III. CONCLUSION

Because the Petitioner has met the three prongs of the *Dhanasar* analytical framework, we conclude that he has established eligibility for a national interest waiver as a matter of discretion. The appeal will be sustained for the above stated reasons.

**ORDER:** The appeal is sustained.