



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

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

In Re: 16086370

Date: AUG. 10, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a gastroenterologist, 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 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 asserts 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. 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.

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 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

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*).

² 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).

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.³

II. ANALYSIS

The Director concluded 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar*'s three-prong analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In his initial cover letter, the Petitioner claimed that "his distinguished record of clinical success and research accomplishments conclusively demonstrates that he can be expected to continue serving the U.S. national interest to a significantly greater extent than other physicians/researchers." Furthermore, the Petitioner asserted that his eligibility "is premised on his accomplishments as physician/researcher who has demonstrated a profound expertise in the area of gastroenterology, as well as in several other areas of medicine." In addition, the Petitioner provided a letter from [redacted] who discussed "some ongoing projects that have the potential to make an impact on the field," such as [redacted] [redacted] also provided the Petitioner's future studies, such as "establish[ing] a standard method to remove [redacted] completely and prevent [redacted] In response to the Director's request for evidence, the Petitioner provided a statement in indicating that he "will be joining [redacted]" "to run more research that further focuses on disease preventive measures and improve the quality of [redacted] The record contains documentation relating to [redacted] diseases and statistics, and information pertaining to [redacted] and gastroenterologists. Here, the Petitioner has sufficiently shown the substantial merit and national importance of his proposed research endeavor. Accordingly, the Petitioner satisfied the first prong of the *Dhanasar* analytical framework.

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record includes documentation of his curriculum vitae, academic credentials, studies, published materials and abstracts, presentation slides, and conference and peer review invitations. He also offered recommendation letters and evidence of citations to his research. For the reasons discussed below, the evidence in the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's previous research and work.⁴ For example, [redacted] stated that the Petitioner "frequently shares his knowledge in gastroenterology [redacted] in a variety of ways, including writing case reports on interesting cases," such as "[redacted]

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

⁴ Although we discuss a sampling of letters, we have reviewed and considered each one.

[redacted] Although [redacted] indicated its publication in the *American Journal of Gastroenterology* and citation in another article, he did not further explain how this article or work has been implemented in the field beyond being cited in a single article, representing a record of success or progress rendering him well positioned to advance his proposed endeavor.

Similarly [redacted] indicated that the Petitioner “often presents unique and difficult cases that he has managed in the form of case report, such as his article [redacted] [redacted]” which was published in the *American Journal of Gastroenterology*.” While he claimed that the Petitioner’s “paper increases the awareness among physicians,” [redacted] did not provide specific examples indicating how the Petitioner’s work has served as an impetus for progress or generated positive discourse in the field, or otherwise signifies a record of success in the field.

Likewise, [redacted] stated that the Petitioner “has produced a significant amount of work on a wide range of topics relevant to his expertise in gastroenterology, such as his article on [redacted] Although he asserted that the article’s publication in the *American Journal of Gastroenterology* “demonstrates the impact this report is having in the field of gastroenterology,” he did not further elaborate and describe the article’s influence in the field, indicating the Petitioner’s history of success in the field.

As it relates to the citation of the Petitioner’s work, the record includes information from Google Scholar indicating that only three of his articles have been cited by others, 7, 2, and 1 time(s), respectively. The Petitioner does not specify how many, if any, citations for each of these individual articles were self-citations by him or his coauthors. Nevertheless, the Petitioner has not shown that the number of citations received by his three articles or the level of interest they generated is sufficient to demonstrate that he is well positioned to advance his endeavor.

As it pertains to the Petitioner’s education, while his degree from [redacted] University of [redacted] [redacted] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding his peer review activity, the Petitioner provided emails requesting him to be a member of editorial boards for journals. However, the Petitioner did not show that he actually served on the boards or otherwise conducted peer reviews for the journals. Regardless, the Petitioner did not demonstrate how receiving requests to be part of journal editorial boards constitutes a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

Similarly, the Petitioner provided emails inviting him to attend conferences and symposiums. However, the Petitioner did not demonstrate which events, if any, he attended. The record contains presentation slides but do not indicate to which events they pertain. Nonetheless, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and

network with other professionals. Here, the Petitioner has not shown that his presentations generated a level of interest to reflect that he is well positioned to advance his endeavor.

The record demonstrates that the Petitioner has published research, but he has not shown that this work renders him well positioned to advance his proposed 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 proposed endeavor. 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 sufficiently demonstrated that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to gastroenterology.

Because 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. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that 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.