



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

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

In Re: 10994914

Date: JUN. 2, 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 mechanical engineer, 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 Nebraska Service Center denied the petition, concluding 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 a brief asserting that she 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.

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 sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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).

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 found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ 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 indicated employment as a mechanical engineer with [redacted] in [redacted] California since 2016.⁵ She previously served in research assistant positions while attending [redacted] University and the University [redacted] from 2009 – 2016.

In the request for evidence and decision, the Director indicated that the Petitioner satisfied *Dhanasar*'s first prong of substantial merit and national importance of her proposed endeavor without explaining his conclusion. Because the record does not demonstrate that the Petitioner fulfills the first prong, we will withdraw the Director's determination for the reasons discussed below.

At initial filing, the Petitioner asserted that she "proposes to continue her research on the development and discovery of theoretical, experimental, and numerical methods to simulate, optimize, and design new mechanical products." As evidence of this proposed endeavor, the Petitioner submitted a job letter from [redacted] listing various position responsibilities, such as "[r]esearch, design, evaluate, install, operate, or maintain mechanical products, equipment, systems or processes to meet requirements" and "[d]evelop or test models of alternate designs or processing methods to assess feasibility, sustainability, operating condition effects, potential new applications, or necessity of modification."

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. *Dhanasar*, 26 I&N Dec. at 889. However, the Petitioner did not specifically describe her endeavor. Instead, the Petitioner broadly claimed to continue her research in unidentified methods and for unspecified mechanical products. Further, the job letter reflects a general overview of the job position of a mechanical engineer at [redacted] rather than adequately identifying her exact endeavor. As she did not establish her proposed endeavor, the Petitioner did not demonstrate that such endeavor has substantial merit and national importance.

Regardless, pertaining to the substantial merit, the Petitioner claimed:

The research conducted by [her] affects numerous applications in everyday life. Mechanical engineering as a field is necessary for many modern devices, from printer nozzles to spacecrafts and machine tools. Furthermore, the knowledge that [she]

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

⁴ The Petitioner received a Ph.D. in mechanical and aerospace engineering from [redacted] University of [redacted] in January 2016.

⁵ 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 position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

provided regarding [redacted] dynamics is used in a number of specialized applications, such as biomechanics, [redacted] devices, combustion engines, and air vehicles.

In support of her claims, the Petitioner referenced a screenshot from omicsonline.org listing various, general applications of mechanical engineering. In addition, the Petitioner highlighted language from letters by [redacted] and [redacted] who discussed the Petitioner's previous research and work. Specifically, [redacted] stated that "[t]hrough her pioneering work, [she] has greatly broadened the field's capabilities, and in doing so, she has paved the way for new, even more progressive research," and [redacted] indicated that "[i]n addition to growing her field's understanding of [redacted] dynamics and computational [redacted] dynamics, [the Petitioner's] work provides important contextual information to researchers and engineers responsible for designing air vehicles, ranging from airplanes to space shuttles."

The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. 884. Although her field and occupation fall within science and technology, the Petitioner did not show that her proposed endeavor contains substantial merit because she has not sufficiently identified her precise endeavor. Further, the omicsonline.org screenshot relates to a broad overview of the mechanical engineering field and occupation rather establishing how her proposed endeavor possesses substantial merit. Moreover, her advisory opinion letters discuss her prior work without indicating the value of her proposed endeavor. Here, the Petitioner did not demonstrate the substantial merit connection between her specific, proposed endeavor and the explicit application of mechanical engineering.

In arguing national importance, the Petitioner asserted:

[Her] proposed endeavor also has broad implications for the field. Her work greatly impacts the assessment and prediction of [redacted] which are necessary factors accounted for in the aircraft and aerospace fields. Given that the US aviation market is currently the largest in the world, with nearly 21,000 business aircrafts in service in 2017, it is clear that her research is important to the United States Moreover, [her] research has also resulted in the development of [redacted] which are useful for application of such things as underwater drones. Indeed, the US Navy has recently created it first Unmanned Undersea Squadron One, or UUVRON 1, thereby confirming the importance of [her] research to underwater national security concerns.

The Petitioner submitted a screenshot from statista.com regarding statistics for the business aviation market in the United States, a screenshot from thedrive.com relating to UUVRON 1, and additional advisory opinion letters from letters by [redacted], [redacted] and [redacted] [redacted] that discuss the Petitioner's prior research. For instance, "[o]ne of [the Petitioner's] most notable research endeavors involved her assessment of [redacted] dynamics' capability of predicting [redacted] interactions" and "[she] has been instrumental in researching such tools, and her research falls squarely within the purview of U.S. interests" [redacted]; "she generated [redacted] which is especially useful in the development of [redacted]" and "[the Petitioner] has considerably improved the efficiency and the overall capabilities of these vital [redacted] which in turn strengthens the U.S.'s ability to

protect itself by conducting underwater missions” [redacted]; and “[the Petitioner’s] exploration of means of predicting the interactions between [redacted] has palpable ramifications for the mechanical engineering field, as well as for the aviation and astronautics sectors in general” [redacted]

In general, the Petitioner’s prior research and findings relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*’s first prong. Again, the Petitioner did not specifically identify her proposed endeavor. Rather, the Petitioner broadly claimed that she would continue her research and relied on her past findings and those possible impacts as evidence of national importance. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her future work. The Petitioner did not differentiate her past research from her prospective endeavor, and she did not demonstrate the nexus between her proposed endeavor and the possible effect on the business aviation market or underwater drones. Although she depends on her past work, the Petitioner has not offered sufficient information and evidence to establish that the prospective impact of her proposed endeavor rises to the level of national importance.

Because the documentation in the record does not establish the requirements of the first prong of the *Dhanasar* precedent decision, the Petitioner has not shown eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established her eligibility 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.