



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 12636888

Date: JUN. 7, 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 [redacted] cardiologist and Director of [redacted] seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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 Nebraska Service Center Director concluded that the Petitioner qualified for classification as an advanced degree professional and that his proposed endeavor had substantial merit. However, the Director concluded that the evidence did not establish that the endeavor is of national importance, that the Petitioner is well positioned to advance the endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner offers a brief and new evidence to argue that he qualifies for a national interest waiver. 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 dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), 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.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

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.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner holds a foreign medical degree and provided evidence of his passing scores on Steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE). The remaining issues to be determined are whether: (1) the Petitioner’s proposed endeavor is of national importance; (2) the Petitioner is well positioned to advance the endeavor; and (3) a waiver of the required job offer and labor certification would be in the national interest.

At the time of filing, the Petitioner was working as a [redacted] cardiologist with [redacted] [redacted] in [redacted] Iowa. He holds a medical license in Iowa and provided a letter from the Director of [redacted], a division of [redacted] stating that the Petitioner is a Director of [redacted]. In this position, the Petitioner “supervis[es] all [redacted] testing . . . organizes and oversees monthly educational lectures for the technicians . . . leads quarterly quality control meetings and [redacted] plays a role in [redacted] for complex patients.” The letter did not mention any research activities or provide an approximate ratio of how much time the Petitioner devotes to clinical work, teaching, and leadership responsibilities.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to work in areas of his interest including cardiac [redacted] treatment of complex valvular heart disease, and cardio-oncology. Additionally, he plans to continue his teaching and clinical research, which involves improving technicians’ skills, providing guest lectures, and volunteering as a preceptor for physician assistant students. His plans also include continuing a research project pertaining to valvular heart disease and the effects of novel procedures such as prosthetic aortic valve replacement. The Petitioner stated that he is currently collecting data in this area and is working on an article concerning a [redacted] case treated at his hospital. He is also interested in developing new ways to treat patients in underserved areas, such as through the use of mobile cardiovascular clinics.

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).

² See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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

The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit. For example, the record includes information from the American Heart Association and various medical journals discussing the prevalence of cardiovascular disease in the United States and its adverse effects on public health.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. On appeal, the Petitioner argues that treating patients so that they become a burden neither on the healthcare system nor the larger economy has a cumulative positive effect on the national welfare. He further argues that continuing in his clinical work will reduce the strain on healthcare resources and permit the recovered patients to return to being productive members of society. While we acknowledge the Petitioner's claims, he has not provided evidence to substantiate them. With respect to the Petitioner's patient care duties, we conclude that while these endeavors do have substantial merit, the record does not establish by a preponderance of the evidence that the Petitioner's clinical work would impact the field of cardiovascular medicine or the U.S. healthcare industry more broadly, as opposed to being limited to the specific patients and workplace he serves. For example, the Petitioner has not included evidence of how many clinical patients he treats, how many recover and return to being productive members of society, or an analytical breakdown of his economic impact to the healthcare system, such as how many and what kind of healthcare resources he has saved. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical activities 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. Here, the Petitioner's teaching and leadership roles appear to impact the technicians, students, and medical center where he works, but he has not established how his teaching and leadership have a broader impact. While we acknowledge the Petitioner's presentations at conferences, he has not indicated that his ideas and teachings from these presentations have been implemented such that the broader impact of his work is established. For instance, the Petitioner has not shown that the benefits to the regional or national economy resulting from his clinical, teaching, and leadership work would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890.

On appeal, the Petitioner argues that the Director selectively misinterpreted the contents of the Petitioner's letters of recommendation such that the opinions therein establish the Petitioner's success as a clinician, but not as a researcher. However, none of the letters identify how much time the Petitioner spends on his research work, nor do they adequately identify how much time he intends to devote to research in the future. Some of the letters indicate that the Petitioner performs meta-analyses of previously published studies, which suggests that he analyzes studies that were already conducted and researched by others. Multiple letters indicate that he was working with a research team and one letter states he worked under the supervision of another doctor. Most letters do not clearly identify whether he occupies a primary or lesser role in the research, nor can we ascertain the nature and extent of the Petitioner's research work.

As mentioned, when examining the Director of [redacted]'s letter, we observe that none of the duties he identified for the Petitioner include research. Further, in the Petitioner's proposed endeavor statement, he does not identify how much time he spends researching,

as opposed to his other clinical, teaching, and leadership activities. In response to the Director’s request for evidence (RFE), the Petitioner identified one ongoing research project and one ongoing case study, but little other specific research project plans. Overall, the record does not include sufficient information or supporting evidence identifying the specific research projects he intends to undertake to demonstrate the nature and extent of his proposed research, nor does it include information explaining how the Petitioner will allocate his time given his numerous other areas of activity.⁴ Accordingly, the Petitioner has not shown that the amount of time he intends to devote to researching is sufficient to meet the first prong of the Dhanasar framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of the Petitioner’s curriculum vitae, academic credentials, medical certifications, published articles, evidence of citations to his published work,⁵ and reference letters which discuss his past research projects and successes as a clinician. Additionally, in his RFE response the Petitioner submitted additional evidence of an ongoing research project, case study data, power point slides for conference presentations, a past guest lecture itinerary, volunteer teaching activities, and a new online account to conduct peer review activities. The record does not include evidence of whether the Petitioner accepted the offer for a volunteer faculty affiliate position, whether he has any future conferences or presentations scheduled, or how many peer review activities the Petitioner has undertaken since creating his account. Nor does the record indicate that the Petitioner has published any research more recently than the year 2017.

In letters of recommendation supporting the petition, several medical practitioners discuss the Petitioner’s research aimed at understanding and treating cardiovascular diseases.⁶ For example, regarding the Petitioner’s research article [REDACTED] [REDACTED] which was cited fourteen times since its publication in 2016, [REDACTED] writes that he expects the article to garner even more attention due to the important issues that it raises and the impact of the condition on healthcare costs. However, [REDACTED] does not describe any actual impact the research has had. The letter also describes a never-before research study that the Petitioner and other colleagues conducted concerning [REDACTED] contributing to [REDACTED] [REDACTED] states that the Petitioner’s research and analytical skills played a key role in the success of the research. [REDACTED] does not, however, describe with specific detail how this research “represents a significant contribution to the literature on the subject.” The study does not appear to

⁴ In Dhanasar, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889.

⁵ As the Director noted, the Petitioner’s work has fourteen citations for an article written in 2016 and two citations for an article written in 2017. None of the citations are included in the record and therefore it is not known how of many of these sixteen total citations are self-citations, nor is there indication that any of the Petitioner’s other publications have been cited. In our precedent Dhanasar 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 NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893. As this demonstrates, 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.

⁶ While we discuss only a sampling of these letters, we have reviewed and considered each one.

have been published and it cannot be determined from the record what success or contribution the research has made in the field.

[redacted] describes a research study that the Petitioner conducted with a team and under the supervision of [redacted]. He described the Petitioner's contribution as "essential" for the expertise the Petitioner provided in [redacted].

[redacted] Although [redacted] states that the study was presented at a conference in 2016 and received a great deal of attention from other cardiologists, there is no indication that this study has been cited by others. Any attention it gathered has not been substantiated in the record. Moreover, [redacted] states that the study results are promising because preventing readmission rates to the hospital benefits both the healthcare system and the patients. Nevertheless, neither [redacted] nor the evidence in the record establishes a direct connection between the Petitioner's study and lowered healthcare costs for the system or the patients.

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 has not shown that his published and presented work has served as an impetus for progress in the cardiovascular medicine field, that it has affected diagnostic or treatment protocols for cardiovascular diseases, or that it has generated substantial positive discourse in the medical community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in researching cardiovascular diseases.

On appeal, the Petitioner argues that because he is a physician-researcher, he is engaged in clinical, research, teaching, and leadership work, and the evidence he already provided fully establishes his achievements in these areas. As explained in the prior section, the Director of the cardiology division did not identify research as a part of the Petitioner's duties and the Petitioner also did not identify how much time he will devote to the various facets of his work. It is not well explained whether the Petitioner occupies a primary or lesser role in the research, nor can we ascertain the nature and extent of the Petitioner's work in each area. Accordingly, we conclude that the Petitioner has not already provided sufficient evidence as he claims. As the record is insufficient to show 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 medical training, knowledge and skills in his specialty, research experience and accomplishments, the importance of his field, and the impracticality of labor certification.

Regarding the benefit the Petitioner would offer even if there are other qualified U.S. workers, the Petitioner argues that he performs clinical work in addition to a range of other medical science work, which sets him apart from other typical minimally qualified U.S. workers. According to the Petitioner, a typical U.S. worker would only engage in clinical work and therefore, the U.S. would not benefit from the research experience offered by the Petitioner. However, as previously explained, the Petitioner has not stated how much time he will devote to his non-clinical duties and does not demonstrate a record of published research more recent than 2017. It cannot be determined from the record that his non-clinical work is substantially more than that which a typical minimally qualified U.S. worker might offer.

The Petitioner also argues that his work combines different professions including clinical physician, medical researcher, and educator, which fall outside the scope of a typical position that can be articulated in a labor certification. While the position may be atypical, the Petitioner has not explained why requirements which exceed and/or are not normal to the occupation cannot reasonably be articulated in a labor certification. In fact, the Department of Labor (DOL) provides guidance on how to capture and adequately inform DOL of this type of information.⁷

As the Petitioner has not established that the proposed endeavor is of national importance under the first prong of the Dhanasar framework or that he is well positioned to advance his proposed endeavor as required by the second prong, 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 first and second prongs of 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.

⁷ See the DOL's Employment and Training Administration page at <https://foreignlaborcert.doleta.gov/faqsanswers.cfm> (last visited June 7, 2021).