



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

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

In Re: 13065452

Date: JUNE 14, 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 pharmaceutical scientist, 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 he 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.

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).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</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.<sup>3</sup>

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.

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<sup>1</sup> 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*).

<sup>2</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).

<sup>3</sup> To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

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) 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>4</sup>

## II. ANALYSIS

The Director found 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.

At the time of filing, the Petitioner was working “as a researcher 5 in the Pharmaceutical [redacted] Laboratory in the Department of Pharmaceutics at the University of [redacted]. His research responsibilities include “conducting research in the area of [redacted]” and developing “an understanding of the relationship between [redacted] using both experimental and computational tools. Another goal is to develop tablet products with desired [redacted] properties.”<sup>5</sup>

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

The Petitioner indicated that he intends to continue his pharmaceutical research involving [redacted] the design of new dosage formulations.” He asserted that his proposed research is aimed at advancing the [redacted] properties of drug products, improving the developability of drugs through [redacted] processes, and promoting taste masking by [redacted]

In his decision denying the petition, the Director determined that the Petitioner had demonstrated both the substantial merit and national importance of his proposed endeavor. The record supports this conclusion. For example, 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 scientific journals and conferences. Accordingly, we agree with the Director that the Petitioner meets the first prong of the *Dhanasar* framework.

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<sup>4</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his research position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical 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 his curriculum vitae, academic credentials, published articles, peer review activity, and participation in projects funded by the National Science Foundation. He also offered evidence of articles that cited to his published work, and letters of support discussing his postdoctoral research under the guidance of [redacted] a professor in the Department of Pharmaceutics at the University of [redacted]

The Petitioner contends on appeal that his education, experience in his specialty, role in various research projects, published work, citation evidence, recommendation letters from others in the field, peer review service, and research funding demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence 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 postdoctoral research projects at University of [redacted].<sup>6</sup> For example, regarding the Petitioner's work involving masking the unpleasant taste of oral drugs, [redacted] stated that the Petitioner developed a solution "to use an [redacted] reaction to create the [redacted] solid forms from a range of nine different compounds." [redacted] further indicated that the Petitioner "was able to form [redacted] and [redacted] reaction" and that "[t]he resulting [redacted] were ideal for [redacted] because they were [redacted] solubility," but he did not provide specific examples indicating that the Petitioner work has been utilized in drug manufacturing operations or otherwise constitutes a record of success in the field.

Additionally, [redacted] professor at [redacted] University in China, stated that the Petitioner "explored the [redacted] stability of [redacted] using simulated [redacted] fluids in order to ascertain the many factors capable of influencing the degradation [redacted]. [redacted] asserted that the Petitioner's "studies determined that [redacted] the most influential in regards to the stability of the studied [redacted] and he was specifically able to highlight the risk of instability in these compounds in the [redacted]" but he does not explain how this work has affected the drug manufacturing industry or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance his proposed endeavor.

With respect to the Petitioner's research relating to the connection between pharmaceutical [redacted] properties, [redacted] a professor at the National Institute of [redacted] in India, asserted that the Petitioner investigated "the applicability of the [redacted] topology analysis approach to better identify [redacted]" [redacted] further stated: "[The Petitioner] combined this approach with [redacted] topology using computational approaches and found that his method was able to easily and accurately identify [redacted] that were in strong agreement with observed [redacted] characteristics." While [redacted] indicated that he cited to the Petitioner's work because it "provided

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<sup>6</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

an excellent example of use of polymer as [redacted] to harvest potential [redacted] advantages of soluble [redacted]” he does not offer examples of how the Petitioner’s computational method and other findings have been implemented, utilized, or applauded in the pharmaceutical industry.

The record also includes examples of various articles which cited to the Petitioner’s work.<sup>7</sup> For instance, the Petitioner provided an article, entitled [redacted] [redacted] (*Journal of Pharmaceutical Sciences*), in which the authors cited to the Petitioner and [redacted]’s paper, entitled “[redacted] (*Crystal Growth & Design*).<sup>8</sup> The article’s authors identified the Petitioner and [redacted]’s paper as one of five that reported using [redacted] as “potential alternatives for masking bitter taste of APIs.” This article, however, does not distinguish or highlight the Petitioner’s work from the 37 other papers referenced in the article.

Another article presented by the Petitioner, entitled [redacted] [redacted] (*CrystEngComm*), cites to the to the Petitioner and [redacted]’s paper, entitled “[redacted] (*Crystal Growth & Design*). In this article, the authors referenced the Petitioner and [redacted]’s work, stating that [redacted] were prepared from the [redacted] using mixtures between [redacted] and the corresponding [redacted] without isolation of the [redacted] base.” This article, however, does not differentiate the Petitioner’s paper from the 38 other papers referenced in the article.

Regarding the Petitioner’s overall citation record, [redacted] professor at [redacted] University, indicated that the Petitioner’s “full body of work has been cited over 100 times. . . . The fact that his work has been used to guide the work of so many other researchers shows that his research has become an integral part of advancement in this area.” As it relates to the citation of the Petitioner’s work, the record includes May 2019 information from Google Scholar indicating that his three highest cited articles, entitled [redacted] [redacted] and [redacted] [redacted] each received 23, 19, and 15 citations, respectively. The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors.

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the engineering research field. The Petitioner claims that his paper coauthored with [redacted] entitled [redacted] [redacted] ranked among “the top 1% most-cited articles published in Pharmacology & Toxicology in 2018” based on the number of citations it has received (9) since that time. He also asserts that he “has eight other articles placing among the top 10% in the field for their respective publication years.” The Petitioner did not indicate whether he

<sup>7</sup> Although we discuss representative sample articles here, we have reviewed and considered each one.

<sup>8</sup> The article’s authors stated: [redacted] [redacted].

factored in any self-citations in determining these percentile rankings. In addition, the Clarivate Analytics citation data is from February 11, 2019, and therefore does not capture citations that occurred after early 2019, while the Petitioner's Google Scholar citation report is dated May 24, 2019.<sup>9</sup> Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Moreover, the documentation from Clarivate Analytics states that “[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution.”

Additionally, the Petitioner presented an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled “How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations.” This article presents recommendations for “how to evaluate individual researchers in the natural and life sciences” for purposes of funding and promotion or hiring decisions. The authors state that “publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent” and that “the top 10% based excellence indicator” should be given “the highest weight when comparing the scientific performance of single researchers.” While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with regard to citation information from Google Scholar, the authors advise against “using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation.”

In response to the Director's request for evidence, the Petitioner presented two line charts (2012-2019) that he claims were derived from “Microsoft Academic.” He contends that these charts compare his citation and publication counts to those of other researchers in the field, but the charts do not identify the specific field used as the basis for comparison. Again, the Petitioner did not indicate whether he factored in any self-citations in compiling his percentile rankings from Microsoft Academic. Moreover, the date of collection of the percentile rankings post-dates the filing of the petition, and therefore the Petitioner has not shown that the citation and publication counts used in the Microsoft Academic percentile calculation occurred in papers published prior to or at the time of initial filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

The record also includes information about several of the journals in which the Petitioner has published his work. That a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in the field.

Further, as it relates to the Petitioner's education, while his doctoral degree from [redacted] University of Science and Technology 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

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<sup>9</sup> A webpage accompanying the Clarivate Analytics information states that its citation “data is updated six times a year” (every two months).

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 thanking him for reviewing manuscripts submitted to *Cellulose*, *AAPS PharmSciTech*, *Pharmaceutical Research*, *Journal of Pharmacy and Pharmacology*, *Journal of Pharmaceutical Sciences*, *International Journal of Pharmaceutics*, and *Heliyon*. The Petitioner, however, has not demonstrated that his participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The Petitioner also asserts that he has received funding for his research from government and commercial sources. For instance, the record includes copies of two “Standard Grants” from the National Science Foundation identifying University of [redacted] researchers [redacted] and [redacted] as “Principal Investigator.” He also presented a research paper that he coauthored with [redacted], [redacted], [redacted] and others in which the “Acknowledgements” section noted that their work was supported by the National Science Foundation. In addition, the Petitioner provided a March 2020 letter from [redacted] stating that their work has also been supported by [redacted] Laboratories, [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] Medicine, but the record does not include copies of the research grants from these companies. In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than [redacted], [redacted] or [redacted]) was mainly responsible for obtaining funding for their research projects.

The record demonstrates that the Petitioner has conducted and published research while at University of [redacted] and [redacted] University of Science and Technology, 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 pharmaceuticals field or that it has generated substantial positive discourse in the pharmaceutical manufacturing industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to pharmaceutical science. As 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.

### 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 the impracticality of labor certification, his expertise in the field, and the importance of his research. 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 second prong of the *Dhanasar* analytical framework, we conclude 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.