



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

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

In Re: 8585527

Date: MAY 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 microelectromechanical systems (MEMS) researcher, 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 approved the immigrant petition, but subsequently issued a notice of intent to revoke (NOIR) and later revoked the approval of the petition, concluding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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 additional documentation and 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

The Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition” Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

[A] notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if

unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.¹

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).² *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, 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

¹ *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Upon the proper issuance of a notice of intent to revoke for good and sufficient cause, the petitioner bears the burden of proving eligibility the requested immigration benefit. *Id.* at 589.

² 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*).

³ 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).

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) 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.⁴

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁵ 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 postdoctoral research associate in the Department of Electrical and Computer Engineering at [REDACTED]. His responsibilities included "design, fabrication and characterization of [REDACTED] devices for [REDACTED] applications." In response to the Director's NOIR, the Petitioner provided a June 2019 letter from [REDACTED] indicating that he joined the company in January 2018 as a Foundry MEMS Research and Development Engineer. This letter further stated that he has been "working on the development of cutting-edge MEMS fabrication technologies for the development of the next generation of MEMS sensors." In July 2019, the Petitioner began serving as a Senior Device Engineer at [REDACTED]. His work for this company involves maximizing its "MEMS [REDACTED] performance

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

⁵ The Petitioner received a Ph.D. in Electrical Engineering from the University of [REDACTED] in August 2015.

as required by [redacted] by, for instance, increasing the [redacted] quality factor using both novel device geometries as well as advanced fabrication techniques.”⁶

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his work “involving the design, fabrication, characterization, and optimization of MEMS devices.” He asserted that his proposed research is aimed at the development of next-generation MEMS [redacted]. The Petitioner further explained that [redacted] address critical [redacted] requirements for devices where [redacted] must coexist to enable high speed operation. Such applications include [redacted]
[redacted]

In the decision revoking the approval of the petition, the Director determined that the Petitioner had not demonstrated the substantial merit and national importance of his proposed endeavor. The Director stated that the Petitioner had not submitted supporting evidence demonstrating that his “proposed endeavor has substantial merit.” Additionally, the Director concluded that the record lacked information relating to the potential prospective impact of the Petitioner’s endeavor aimed at researching MEMS [redacted] technologies.

With respect to the endeavor’s substantial merit, the Petitioner submitted letters of support discussing the merit of his proposed research. For example, [redacted] professor at [redacted] asserted that “MEMS have been identified as one of the most significant emerging technologies of this century. They are widely utilized in a variety of domains, including automotive, healthcare, electronics, and oil and gas industries, which indicates that this topic is critical to the scientific advancement of the United States.” The record also includes information from the U.S. Defense Advanced Research Projects Agency (DARPA) and Sandia National Laboratories discussing the value of MEMS to our country’s national security. The letters of support and other corroborating evidence in the record are sufficient to demonstrate that the Petitioner’s proposed research aimed at advancing MEMS technologies has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. As evidence that the benefit of his proposed research has broader implications in the field, the Petitioner submitted letters from several electrical engineering professors discussing the commercial benefits associated with his research aimed at the design, fabrication, characterization, and optimization of MEMS devices. In addition, he presented information about the advantages associated with improvements in [redacted] technologies, as well as the applicability and impact of MEMS research to industry “sectors such as telecommunications, consumer electronics, transportation, building automation and healthcare.” Furthermore, 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. As the Petitioner has demonstrated both the substantial merit and national importance of his proposed

⁶ 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 positions 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.

research, we conclude that he meets the first prong of the *Dhanasar* framework and withdraw the Director's determination on this issue.

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, conference presentations, and peer review activity. He also offered evidence of articles that cited to his published work, and letters of support discussing his graduate and postdoctoral research. For example, the record contains a November 2016 letter of support from [redacted] Founder and Chief Technology Officer of [redacted] (a defunct company that ceased operations in 2017), stating that his company utilized "an [redacted] detection technique developed by [the Petitioner] in our [redacted] meters."⁷ The Director concluded that the Petitioner's published work, citation evidence, development of [redacted]'s [redacted] detection technique, and letters of support were not sufficient to demonstrate that he is well positioned to advance his proposed endeavor.

The Petitioner contends on appeal that the Director erred in questioning the credibility of [redacted]'s claims relating to [redacted] and its utilization of a [redacted] detection technique developed by the Petitioner. For example, the Petitioner points out that the Director incorrectly concluded that [redacted]'s "lease agreement is missing the suite number."⁸ Based on the information in the lease agreement, the National Science Foundation grant, and [redacted]'s October 2019 letter, we withdraw the Director's finding questioning the credibility of [redacted]'s claims.

Additionally, the Petitioner asserts that the Director erred in not considering evidence that post-dates the filing of the petition. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The Petitioner further argues that his research experience, published and presented work, citation evidence, recommendation letters from others in the field, commercialization of his MEMS research, and peer review service demonstrate that he is well positioned to advance his proposed endeavor. For

⁷ [redacted] has also served as an associate professor at [redacted] and was the Petitioner's Ph.D. advisor. The November 2016 letter from [redacted] listed the address for [redacted] and was accompanied by a webpage describing the company's "[redacted] detector." In both the NOIR and the decision revoking the approval of the petition, the Director indicated that in March 2019 "USCIS attempted to access [redacted]'s website, but was unable to access the website to verify the information submitted" because the company's "website did not work." The Director also noted that an online search of Better Business Bureau records performed in March 2019 "revealed that a different business occupied the address" identified in [redacted]'s letter. The Director concluded that this information cast doubt on the credibility of [redacted]'s claims. In response to the Director's NOIR, the Petitioner provided [redacted]'s lease agreement for the address in question and a National Science Foundation "standard grant" listing the company's address. He also submitted an October 2019 letter from [redacted] explaining that [redacted] "went out of business in 2017."

⁸ We agree that this conclusion was in error. The lease agreement lists the suite number as "300."

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 research projects at [redacted], [redacted] University of [redacted] and [redacted] Polytechnic.⁹ For example, regarding the Petitioner's work involving identification of [redacted] for robotic applications, [redacted] [redacted] assistant professor of mechanical engineering at [redacted] University, stated that the Petitioner applied "the nonlinear least square method to identify the properties of the [redacted] materials, which enabled a more precise identification of [redacted] parameters. [The petitioner] also developed an experimental setup, which allowed him to confirm the performance of his model." While [redacted] asserted that the Petitioner's "identification scheme eliminates the previous challenges and provides a more comprehensive understanding of [redacted] characteristics," he did not provide specific examples indicating that the Petitioner's methodology has been implemented in the robotics industry or otherwise constitutes a record of success in the field.

With respect to the Petitioner's Ph.D. studies at University of [redacted] and [redacted] [redacted] stated that the Petitioner "developed a novel platform to obtain mass concentration of [redacted] [redacted] in real time."¹⁰ In addition, [redacted] asserted that the Petitioner "took advantage of [redacted] to develop a novel method for measuring [redacted] and [redacted] and that this "platform demonstrated up to ten times better sensitivity when operating in aqueous solutions." [redacted] also indicated that he "utilized [the Petitioner's] research at my company [redacted], which I founded in 2011," but the record does not show that the Petitioner's [redacted] detection technique has been utilized beyond his Ph.D. supervisor's company or has otherwise attracted a level of interest in the field that renders him well positioned.

Additionally, [redacted] professor at [redacted] University, asserted that the Petitioner "developed and integrated [redacted] mass balances in [redacted] [redacted] impactors, which provided real time information on mass concentration of [redacted] separated by size."¹¹ [redacted] contends that the Petitioner's work is significant for numerous domains, particularly in the pharmaceutical industry," but he did not offer examples of how the

⁹ While we discuss a sampling of these letters, we have reviewed and considered each one.

¹⁰ [redacted] the Petitioner, and three others authored a paper on this topic, entitled [redacted] (2013). As documentation of interest in his work, the Petitioner submitted a July 2013 email from [redacted] a product planning manager with [redacted] asking the Petitioner for a copy of the aforementioned paper. In two subsequent emails to [redacted] [redacted] stated that [redacted] "is looking for sensor solutions to detect [redacted]" and requested that he and [redacted] "continue the conversations on this issue" and "keep in touch."

¹¹ With regard to [redacted]'s letter, the Director's decision stated: "Because the signature on the letter was digitally rendered, USCIS cannot consider the content of the letter as credible." As the basis for this determination, the Director references USCIS Policy Memorandum PM-602-0005.1, *Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U.S. Citizenship and Immigration Services* (Feb. 15, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-02-16-PM-602-0134.1-Signatures-on-Paper-Applications-Petitions-Requests-and-Other-Documents.pdf>. This memorandum "provides the current USCIS policy regarding the signature requirement for applications, petitions, requests, and other documents that require a signature prior to filing with USCIS." We do not interpret this policy to govern reference letters that are submitted as evidence in support of a petition. Accordingly, we withdraw the Director's determination on this issue.

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 claimed that three of his papers ranked among “the top 10% most-cited articles published in Engineering” based on the number of citations received since their publication. The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. In addition, because the Petitioner has not shown that the Clarivate Analytics data is contemporaneous with the Petitioner’s Google Scholar data, he has demonstrated that the former provides a proper analysis of his citation record.¹⁵ 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. Regardless, the Petitioner’s field of electrical engineering does not fall under “the natural and life sciences.” 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.”

The Petitioner’s response to the Director’s NOIR included May 2019 information derived from “Microsoft Academic” that compares his citation and publication counts to those of other researchers in the areas of “Microelectromechanical Systems, Microstructure, Electrical Engineering, Physics, Material Science, Thin Film.” 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 (May 21, 2019) post-dates the filing of the petition, and therefore the Petitioner has not shown that the 243 Google Scholar citations 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 examples of various articles which cited to the Petitioner’s work.¹⁶ For instance, he provided an article entitled,

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.

¹⁵ A webpage accompanying the Clarivate Analytics information states that its citation “data is updated six times a year” (every two months).

¹⁶ Although we discuss representative sample articles here, we have reviewed and considered each one.

[redacted] (*Journal of Micromechanics and Microengineering*), in which the authors cited to the Petitioner's paper in *Sensors IEEE International Conference*. The article's authors identified the Petitioner's paper as one of five that "reported specific chemical functionalization and/or biological detection on their [redacted] sensors." This article, however, does not distinguish or highlight the Petitioner's work from the 40 other papers referenced in the article.

Another article presented by the Petitioner, entitled [redacted] [redacted] (*Applied Physics Reviews*), cites to the Petitioner's paper in *IEEE Electron Device Letters*. In this review article, the authors referenced the Petitioner's work, stating that it "increased the sensitivity of a [redacted] using the [redacted] [redacted] This article in *Applied Physics Reviews*, however, does not differentiate the Petitioner's paper from the 383 other papers referenced in the article.

With respect to the documentation reflecting that the Petitioner has presented his work at engineering conferences (such as the 2013 IEEE [redacted] Conference in [redacted] and the 2016 [redacted] [redacted] Workshop in [redacted]), we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and network with other professionals. Although presentation of the Petitioner's work indicates that he shared his original findings with others, he has not shown that the number of citations received by his articles or the level of interest they generated is sufficient to demonstrate that he is well positioned to advance his endeavor.

The Petitioner maintains on appeal that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent 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.

Furthermore, the Petitioner asserts that his research appeared on the cover of *Nanotechnology*, a weekly journal focusing on nanometer-scale objects. He presented the [redacted] 2014 cover of *Nanotechnology* which includes his and [redacted] s paper, entitled [redacted] [redacted] but the record lacks supporting evidence showing the stature of the journal. Furthermore, the December 2016 Google Scholar information for their article indicated that it had not received any citations at the time of filing. Nor is there supporting evidence showing that their article has otherwise attracted a level of interest from others in the field sufficient to meet *Dhanasar*'s second prong.

Regarding his peer review activity, the Petitioner provided emails thanking him for reviewing manuscripts submitted to *IEEE Electron Device Letters*, *IEEE Sensors Journal*, *IEEE Journal of Microelectromechanical Systems*, *Journal of Applied Physics*, *Journal of Mechanics and Microengineering*, *Sensors & Actuators: A. Physical*, and *Nanotechnology*. The Petitioner, however, has not demonstrated that his occasional 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 record demonstrates that the Petitioner has conducted, published, and presented research relating to his graduate and postdoctoral work, 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 and presented work has served as an impetus for progress in the electrical engineering field or that it has generated substantial positive discourse in the sensing applications industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to MEMS. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, we agree with the Director that the Petitioner has not established 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 revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.