



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

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

In Re: 19808324

Date: MAR. 3, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a geology 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 denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, 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.²

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

¹ 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).

² 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.

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.³

II. ANALYSIS

The record indicates 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner stated that she intends to continue her scientific research involving “microfossils and their applications in the context of environmental and paleoenvironmental assessments.”⁵ She also asserted that she plans to undertake research aimed at sea level forecasting, offshore sand and mineral discovery, and [REDACTED]

The record indicates that the Petitioner had demonstrated both the substantial merit and national importance of her proposed endeavor. For example, the Petitioner has submitted documentation indicating that the benefit of her 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 conclude that the Petitioner meets 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 her curriculum vitae, academic credentials, published articles, and presented work.⁶ She also offered letters of support discussing her graduate and undergraduate research projects at [REDACTED] University [REDACTED] and her ongoing work at [REDACTED] University [REDACTED]

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

⁴ The Petitioner presented her master's degree in Geology from the [REDACTED] University [REDACTED] (2018) as well as an academic credential evaluation indicating that the aforementioned degree is the foreign “equivalent to a master's degree in geology from a regionally accredited institution in the United States.”

⁵ The Petitioner has worked as a research affiliate in the Department of Coastal and Marine Systems Science at [REDACTED] University since August 2019. 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 research 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.

⁶ Additionally, the Petitioner provided a “Final Report,” entitled [REDACTED] [REDACTED] This report was authored by [REDACTED] (Principal Investigator) and [REDACTED] (Collaborative Partner), but it identifies the Petitioner as one of 16 “Associated Students.”

The Petitioner contends on appeal that her education, experience in her specialty, role in various research projects, published work, scientific presentations, recommendation letters from others in the field, commitment to her endeavor, and research funding demonstrate that she is well positioned to advance her 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 her proposed research under *Dhanasar's* second prong.

In letters supporting the petition, several references discussed the Petitioner's research projects.⁷ For example, regarding the Petitioner's undergraduate work involving [redacted] aquifers in [redacted] Brazil, [redacted] professor at [redacted] stated that the Petitioner worked "to characterize the [redacted] of the aquifer through the evaluation and interpretation of physical and chemical analysis. The water, withdrawn directly from wells in residences and other sources, allowed the characterization of the freshwater/saltwater [redacted] processes." [redacted] further indicated that the Petitioner studied "the geological and geotechnical consequences of an extreme rainfall event" in the [redacted] mountain region that caused flooding, falls, and landslides. While [redacted] asserted that the Petitioner "worked hard and provided significant results in the studied area," he did not provide specific examples indicating that the Petitioner's research findings have been implemented, utilized, or applauded in the in the geology field.

With respect to the Petitioner's research relating to [redacted] [redacted] [redacted] associate professor at [redacted] asserted that the Petitioner "worked with [redacted] [redacted] microorganisms used as bioindicators of the marine environment, where their species and assemblages respond in a varied way to the physicochemical characteristics of the environment." [redacted] explained that the Petitioner's work was carried out in the [redacted] National Park and that her "results indicated that the lagoons are preserved from human action since the characteristics of the assemblage indicated low [redacted] influence." In addition, [redacted] stated that the Petitioner utilized [redacted] for paleoecological interpretations in the [redacted] River Delta Complex and that this "work was of great importance for the better understanding of the studied area." [redacted] further noted that the Petitioner's work was published in the *Journal of South American Earth Sciences* and that an abstract was sent to the [redacted] Brazilian Congress of Geology, but the record does not indicate that her published and presented work has been frequently cited by independent researchers, has affected the geology field, or otherwise constitutes a record of success or progress in her research field.

Additionally, [redacted] [redacted] of the *Journal of South American Earth Sciences*, stated that the Petitioner's paper in his journal "was concentrated in [redacted] [redacted] and this microfossil have [*sic*] a wide spatial-temporal distribution, from coastal to deep marine environments and are good environmental indicators" [redacted] also contended that "the result of the research was shown to be significant and of great value for the geological knowledge of the area as well as of great significance for future research," but he does not offer specific examples indicating that the Petitioner's work has influenced the field of geology or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance her proposed endeavor.

⁷ While we discuss a sampling of these letters, we have reviewed and considered each one.

Regarding the Petitioner's work at [redacted], [redacted], associate professor at [redacted] discussed the Petitioner's involvement in three of his projects relating to sea level forecasting, offshore sand and mineral discovery, and [redacted].⁸ While [redacted] asserted that the Petitioner has "highly valuable expertise in [redacted] . . . which is of great general value use for research projects dealing with coastal dynamics and human-related issues and demands in coastal wetlands and shore zones," he did not explain how the Petitioner's research findings have generated positive interest among relevant parties, have been implemented by others in the field, or otherwise reflect a record of success or progress rendering her well positioned to advance the proposed endeavor.

As it relates to the Petitioner's education, the record indicates that she received both a master's degree and a bachelor's degree in geology from [redacted]. While the Petitioner's education renders her eligible for the underlying EB-2 visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance her 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 their proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The Petitioner also asserts that she has received funding for her research from organizations such as the Brazilian National Council for Scientific and Technological Development and the Bureau of Offshore Energy Management, but the record does not include copies of the research grants from these organizations. 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 her research supervisors such as [redacted], [redacted], or [redacted]) was mainly responsible for obtaining funding for her research projects at [redacted] and [redacted].

The record demonstrates that the Petitioner has conducted research while at [redacted] and [redacted] but she has not shown that this work renders her well positioned to advance her proposed endeavor. 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 their 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 support such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the geology field or that it has generated substantial positive discourse in sea level forecasting, offshore sand and mineral discovery, and [redacted]. Nor does the evidence show that her research findings have been frequently cited by independent researchers or otherwise constitute a record of success or progress in advancing research relating to microfossils and their applications in the context of environmental and paleoenvironmental assessments. As the record is insufficient to demonstrate that the Petitioner is well positioned to

⁸ The Petitioner provided information from Google Scholar indicating that [redacted] has authored more than 150 research articles and that his published work has received 3,619 cumulative citations.

advance her proposed research endeavor, she has not established that she 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 she is eligible for a waiver due to the impracticality of labor certification, her expertise and research accomplishments in the field, and the significance of her proposed work. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she 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 she has not established she 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.