



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

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

In Re: 19825435

Date: MAR. 9, 2022

Appeal of Texas Service Center Decision

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

The Petitioner 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. The Director also dismissed the subsequently filed motion to reconsider. The matter is now before us on appeal.

On appeal, the Petitioner asserts that the Director did not fully adjudicate the issues and 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 agree with the Petitioner that the Director's decision is insufficient for review and will remand the matter to the Director for further action and consideration.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Although the Director’s decision did not address this issue, the Petitioner’s Ph.D. in chemistry from [redacted] University establishes that he is a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue 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.

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

1. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing, the Petitioner held the position of postdoctoral research associate in the division of Chemical Biology and Medicinal Chemistry [redacted] of the [redacted] School of Pharmacy at the University [redacted] where he specializes in the field of medicinal chemistry and is responsible for the “[d]evelopment of chemical probes and synthesis of small molecule inhibitors for understudied protein kinases.”

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. The Director’s decision, however, did not render a determination as to whether the Petitioner satisfies prong one of the *Dhanasar* analytical framework.

2. Well Positioned to Advance the Proposed Endeavor

The Petitioner contends that his education, position, research experience, recommendation letters from others in the field, citation record, journal ranking and impact factor, and research funding demonstrate that he is well positioned to advance his proposed endeavor. The Director’s decision, however, did not include a sufficient analysis of the content of the letters or a proper discussion of the deficiencies in the remaining evidence presented under this prong of the *Dhanasar* framework.

For example, regarding the Petitioner’s claims of funding from the National Institutes of Health (NIH), the Director concluded that the Petitioner did not “provide evidence showing that his contribution was a factor in receiving the grants.” In *Dhanasar*, we explained that:

[T]he record includes documentation that the petitioner played a significant role in projects funded by grants from the National Aeronautics and Space Administration (“NASA”) and the Air Force Research Laboratories (“AFRL”) within DOD. Thus, the significance of the petitioner’s research in his field is corroborated by evidence of peer and government interest in his research, as well as by consistent government funding of the petitioner’s research projects.

In addition, the record established that Dr. Dhanasar “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, as evidence of the receipt of funding, the Petitioner provided a document entitled [redacted]. Not only does it not include the Petitioner’s name, but it lists three other individuals from [redacted] among others, as the recipients of grants.

3. Balancing Factors to Determine Waiver’s Benefit to the United States

The Director’s decision listed a number of factors that USCIS may consider in determining whether, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification, but did not sufficiently evaluate the Petitioner’s arguments and evidence as they relate to these factors.

III. CONCLUSION

In light of the above, we are remanding the petition for the Director to properly apply all three prongs of the *Dhanasar* analytical framework.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.