



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

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

In Re: 22697955

Date: OCT. 25, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a medical 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 Nebraska Service Center denied the petition, concluding that while the Petitioner qualified as a member of the professions with an advanced degree, the record did not establish that a waiver of this classification's job offer requirement was in the national interest. She now appeals that decision.

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. 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.

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.

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. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a 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.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,

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) (*NYS DOT*).

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, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

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.³

II. ANALYSIS

The Petitioner is a medical researcher focusing in the area of liver transplantation. She obtained a bachelor's degree in medicine from [REDACTED] in Brazil in 2010, and was previously employed as a surgeon and researcher at a hospital in Brazil. At the time of filing her petition she was a research intern at the University of [REDACTED]. She proposes to continue performing research in the area of liver transplantation in the United States.

The Director found that the Petitioner qualifies as a member of the professions with an advanced degree, and upon review we agree. Therefore the sole issue on appeal is whether a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

A. Substantial Merit and National Importance

As noted above, in the first prong of the *Dhanasar* framework, we consider the specific endeavor proposed by the petitioner and its potential prospective impact. In the Director's decision, he focused on a specific research project in which the Petitioner was engaged at the University of [REDACTED] time of filing, and appeared to conclude that because she was no longer working on that project and had changed employers, her proposed endeavor did not meet this prong.⁴ However, as mentioned above, the analysis in the first prong under the *Dhanasar* framework is prospective, focusing on the merits of the proposed endeavor, and is not limited by a petitioner's job at the time of filing. As with all of those applying for a national interest waiver, we consider the Petitioner's current and prospective job offers in this analysis only as they illustrate the capacity in which she intends to work. We will therefore focus in our review on the Petitioner's proposed endeavor of performing research regarding liver transplantation, which includes [REDACTED] the liver after removal from the donor.

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

⁴ The Director concluded without providing analysis that the Petitioner's work on this research project was of substantial merit and national importance, but then noted that she was "no longer conducting that research."

The substantial merit of the Petitioner's proposed endeavor is evidenced by documentation showing its role in advancing medical science and improving human health. Information in the record from the website of the Mayo Clinic indicates that liver transplantation is an important treatment option for many types of chronic liver failure. In addition, the Petitioner submitted several articles published in scientific journals noting the potential for [redacted] to provide improved assessment and restoration of livers prior to transplant. This evidence establishes that her proposed endeavor is of substantial merit.

When evaluating the national importance of a proposed endeavor under *Dhanasar*, we look for evidence that it will have broader implications within a particular field. Here, the record includes a 2018 article published in the journal *Organogenesis* noting that the availability of liver transplantation remains limited in the United States due to the lack of livers of suitable [redacted] and that [redacted] offers an opportunity to [redacted] donor organs. Based upon this evidence, the Petitioner has established that proposed endeavor is of national importance.

As the Petitioner has shown that her proposed endeavor meets both elements of the first prong of the *Dhanasar* analysis, we will next consider whether she is well positioned to advance her endeavor.

B. Well Positioned to Advance the Proposed Endeavor

In determining whether a petitioner is well positioned to advance their endeavor, we look at factors including 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. On appeal, the Petitioner argues that the Director did not evaluate any of these factors in his decision, and that the Director erred in finding that she had made an impermissible material change to the petition when submitting evidence regarding her new employer.

Regarding the latter issue, in responding to the Director's request for evidence (RFE) the Petitioner submitted a letter from the University of [redacted] offering her a position as a Medical Scientist II, as well as evidence which showed that she had accepted the offer and began working there. This letter indicated that the position was in the school's department of surgery, and more specifically the division of transplant surgery, and listed the research duties she would have in this position. As this evidence shows that the Petitioner intends to continue to pursue her proposed endeavor, we disagree with the Director's finding that her acceptance of a position with a new employer constituted a material change to the petition, and withdraw that portion of his decision.⁵

Turning to the factors weighed when evaluating a petitioner's positioning to advance their endeavor, the Director concluded that the evidence of the Petitioner's research did not show that she had a track record of success. He specifically noted that at the time of filing, the Petitioner had co-authored a conference presentation, but had not submitted evidence of other published papers that had garnered attention in her field. The Director also noted the reference letters in the record written by physicians,

⁵ We further note that per a search of the Google Scholar database, the Petitioner has continued to publish research in the area of liver transplantation after filing her petition.

one of whom was a former colleague of the Petitioner's, but concluded that they also did not show that she had a record of success as a researcher.

On appeal, the Petitioner first refers to the letters which were submitted in response to the RFE. One of these was written by a former co-worker of hers at the University of [redacted] [redacted] [redacted] writes that the Petitioner had presented scientific posters concerning [redacted] at professional conferences in her home country of Brazil which were depended upon by industry professionals, but does not provide any specific information or refer to supporting evidence. Although another letter from a former colleague who worked with her in Brazil provides more detail, it concludes that a [redacted] technique that the Petitioner helped to develop "could certainly be used worldwide for similar diagnoses." Neither letter shows that her previous work in Brazil, evidenced by certificates documenting a surgical case study and a poster presentation in the area of nutrition, constitutes a track record of success relating to her proposed endeavor of research in liver transplantation.

Another letter was submitted by [redacted] of the University of [redacted] both with the initial filing and in response to the Director's RFE. She references "the tremendous progress" in [redacted] that the Petitioner made with her poster presented at the 2020 American Transplant Congress, but does not specify the nature of that progress or provide any gauge of its success. Similarly, her second letter describes in great detail research conducted by the Petitioner relating to liver transplantation which had been submitted to a journal for review but had yet to be published. While we acknowledged above that such research is in the national interest, this evidence does not demonstrate that the Petitioner's work has been deemed by the field to be successful or has generated interest among other researchers.

A third set of letters was written by [redacted] an anesthesiologist who became aware of the Petitioner's work by reviewing her resume and presentations. In his initial letter, he opines that the Petitioner's presentation at the 2020 American Transplant Congress "evidences our nation's immense interest in her work" and that her "continued research has the substantial probability to boost resourcefulness within the medical field." However, we need not accept these primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). [redacted] provides no basis for these and other similar statements in his letters, and as such they carry little weight in showing that the Petitioner is well positioned to advance her endeavor.

The Petitioner also refers to a non-precedent decision we issued in another matter on December 20, 2010 to support her contention that her continued publications after the date of filing reinforce an existing trend, and thus show her record of success. As noted in that decision, non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. We note that that decision considered additional *citations* to a researcher's already published work after the date of filing, not work published after the date of filing. In addition, the Petitioner has not established that her presentation of three posters prior to filing her petition, only one of which directly relates to her proposed endeavor, establishes a trend which has since been built upon to show a record of success. As indicated in the O*Net Online report for medical scientists included in the record, an essential part of the duties of a medical scientist is writing and publishing articles in scientific journals and presenting at conferences, such that performing this duty is not an indicator of success.

In summary, we agree with the Petitioner that her change in employment was related to her proposed endeavor and therefore did not constitute an impermissible material change to the petition. However, while she possesses sufficient education and experience to carry out her duties as a medical scientist, she has not shown that she has a record of success in her field, or that she has made significant progress towards achieving her proposed endeavor. In addition, she has not shown that her work related to her proposed endeavor has drawn the interest of other researchers in her field, either through citation of her published work or implementation of her research. For these reasons, we conclude that she has not established that she is well positioned to advance her endeavor.

C. Whether on Balance it Would be in the National Interest to Grant a Waiver

As explained above, the third prong of the *Dhanasar* framework 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. The *Dhanasar* decision spells out several possible factors to be weighed under this prong, three of which were considered by the Director in his decision and are now argued by the Petitioner on appeal. Although we have already determined that the Petitioner has not established that she is well positioned to advance her endeavor and therefore does not merit a national interest waiver, we will briefly address each of these claims.

The Petitioner first argues that it would be impractical for her to obtain a labor certification because of her “rare combination of experience and education.” In support of this argument she refers only to [redacted] second reference letter, in which he makes several unsupported assertions regarding the labor certification process despite admitting that he is “no specialist in immigration law.” For example, he writes that “earning a medical degree alone provides far from enough training to conduct high-level research of the type that [the Petitioner] performs.” However, the chapter from the U.S. Department of Labor’s *Occupational Outlook Handbook* on medical scientists, which was submitted by the Petitioner, indicates that medical scientists “typically have a Ph.D.,” while some “get a medical degree instead of, or in addition to, a Ph.D.” The Petitioner has not established that her education, which is equivalent to a U.S. bachelor’s degree, and her experience includes knowledge or skills that are rare or would not easily be articulated in a labor certification.

In addition, the Petitioner asserts that because of the shortage in available livers for transplant, the national interest in her contributions to is sufficiently urgent to warrant foregoing the labor certification process. While the record includes several articles from scientific journals which identify this shortage and imply some level of urgency, it does not demonstrate that the Petitioner’s contribution to research that addresses this issue rises to the level at which it overcomes the national interest in protecting the domestic labor supply inherent in the labor certification process.

Finally, the Petitioner asserts that her specialized skills are such that even assuming the availability of other qualified U.S. workers, the nation would still benefit from her contributions. As we have already considered her education, experience and skills under the second prong and concluded that they do not position her to advance her proposed endeavor, we similarly conclude here that they are not sufficient to show that it would be beneficial to the United States to waive the requirement of a job offer.

For all of the reasons explained above, we conclude that the Petitioner does not meet the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has established that shed qualifies as a member of the professions with an advanced degree, and that her proposed endeavor is of substantial merit and national importance. However, because she has not shown that she is well-positioned to advance that endeavor, and that the national interest in her endeavor outweighs that inherent in the labor certification process, she does not merit a waiver of the classification's job offer requirement.

ORDER: The appeal is dismissed.