



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

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

In Re: 23070928

Date: FEB. 2, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an environmental scientist, seeks employment-based second preference (EB-2) 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 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 record did not establish that the Petitioner qualifies for a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo 's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner earned a master's degree in natural resources engineering from [redacted] University in Iran in 2013, and her intended occupation qualifies as a profession.

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.

When she filed the petition in November 2019, the Petitioner was a graduate student in the Department of Environmental Science and Technology at the University of [redacted] where she had been a doctoral student since 2015. Outside of her graduate studies, her only recent claimed past employment was a part-time internship at the [redacted] Water and Sewer Authority from May 2016 to January 2017. The Petitioner completed her doctorate in August 2020. The record documents offers of postdoctoral positions but does not show which, if any, of these offers she accepted.

At the time of filing the petition, the Petitioner stated that she intended to remain at [redacted] as a postdoctoral scholar, where she would “[c]onduct research improving urban water management and sustainability with effective implementation of green infrastructure and develop resilience assessment tool[s] and decision support systems.” She added that her “research addresses the fundamental need of society, being resilience to climate change hazards such as flooding and drought and having access to safe and adequate drinking water.”

In response to a request for evidence (RFE), the Petitioner provided more details, stating:

[M]y proposed endeavor seeks to (1) develop and expand models on climate change effect on regional and watershed-scale flooding and heat, (2) Identify stakeholder attitudes and perceptions for improving the selection of best practices for hazard mitigation plans in vulnerable areas and (3) develop framework decision-support systems to improve policy and management and move toward a more resilience [sic] cities.

The Director determined that the Petitioner had shown that her proposed endeavor has both substantial merit and national importance, and thus meets the first prong of the *Dhanasar* framework, but not the second prong. The Director further concluded that, because the Petitioner had not established that she is well-positioned to advance the proposed endeavor, she had not met the third prong by establishing that, on balance, a waiver of the job offer requirement would benefit the United States.

We agree with the Director's conclusions about the first *Dhanasar* prong, and need not elaborate here.

A. Well Positioned to Advance the Proposed Endeavor

To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner asserted that she is well-positioned to advance the proposed endeavor because of her academic studies and because she “held a number of research-based positions.” Education and experience can contribute to a showing that the Petitioner is well-positioned, but we must consider the record as a whole.

The Petitioner’s doctoral advisor at [redacted] stated that the Petitioner’s “research is highly pertinent to green infrastructure development,” which, in turn, “is based on the integration of natural ecological systems into urban environments with the goal of improving biodiversity, stormwater management, climate and air quality, and maximizing food production.” In terms of the Petitioner’s specific contributions in that area, the Petitioner’s advisor stated:

[The Petitioner] has conducted research in the area of green infrastructure to identify some of the advantages conferred by green space development, including controlling air pollution and developing new recreational spaces. . . . [The Petitioner’s] research helps to provide the justification for land management authorities to undertake green infrastructure development projects. . . . Lastly, [the Petitioner] designed a new assessment tool to help characterize green infrastructure resilience and efficacy.

The Petitioner submitted letters from faculty members at various U.S. universities, discussing various projects that the Petitioner has pursued during or in conjunction with her graduate studies. The Petitioner also submitted copies of her published articles. The Petitioner states that her “peer-reviewed journal articles . . . have been published in the top journals in [her] field, which reflects her peers’ recognition of the value of this research.” The Petitioner asserts that the influence of her work is evident from citations of her work. A printout from Google Scholar shows 17 such citations, and the Petitioner also submitted a partial copy of a “mini-review” article from 2019 that cited five of her articles.

Some of these letters and articles concern work from several years earlier, such as studies of agricultural pesticide runoff. Nearly all the documented citations of the Petitioner’s work relate to this earlier research rather than to her more recent work. The letters do not explain how the Petitioner’s earlier work is directly relevant to the Petitioner’s proposed endeavor of research into green infrastructure in urban environments.

In the denial notice, the Director acknowledged the Petitioner’s evidence, but found that it did not establish that the Petitioner is well-positioned to advance the proposed endeavor. The Director stated that the letters from other researchers “do not explain how the petitioner’s work has been implemented, utilized, applauded by others in the field, or has served as an impetus for progress.”

On appeal, the Petitioner asserts that the Director imposed too strict a standard. Specific wording aside, *Dhanasar* requires more than a showing that an individual is qualified to work in a given profession or occupation. We look at an individual's record of success and the degree of interest that the individual's work has attracted. *Id.* at 890.

In this case, the Director acknowledged the evidence of citation to the Petitioner's work, but concluded that the Petitioner did not show that "the number of citations . . . reflects a level of interes[t] in her work . . . sufficient to mee[t] *Dhanasar*'s second prong." The Director stated that, while all published research "add[s] information to the pool of knowledge . . . not every individual who performed original research will be found to be well positioned to advance her proposed endeavor."

On appeal, the Petitioner asserts that she has submitted letters from several researchers who have implemented her research findings. Some of these researchers have cited the Petitioner's work in their own articles. *Dhanasar* refers to "the *degree* of interest that the individual's work has attracted" (emphasis added). We must consider the weight of each piece of evidence and determine whether the aggregate is enough to meet the second *Dhanasar* prong. Here, the limited evidence of interest is insufficient to meet the Petitioner's burden.

The Petitioner has shown that her research is useful, but as the Director acknowledged in the denial notice, it is the nature of scientific research to produce new knowledge. The national interest waiver is an additional benefit, not provided to every member of the professions holding an advanced degree who applies, and not every productive researcher will qualify for that additional benefit.

The Petitioner states that the Director did not sufficiently consider the Petitioner's involvement in peer review. While one of the submitted letters contended that "peer review is a rare responsibility for researchers," the record does not offer sufficient independent, objective support for the claim that the Petitioner's peer review activity indicates her standing in the field. The journal publisher's own materials are inherently self-serving and promotional with respect to the publisher's reputation and asserted standards.

At the time of filing, the Petitioner served on the editorial board of a journal published by MedWin Publishers. The Petitioner states, on appeal, that "MedWin requires reviewers to submit their CVs as part of their application to be a reviewer, indicating that reviewers are carefully vetted." A letter from MedWin in the record reads, in part:

MedWin is an open access, internationally peer-reviewed Publishers that are indulged in publishing original articles with an emphasis on the latest research findings. . . .

. . . .

We are glad that we providing letter of Recommendation for Dr. [the Petitioner's name] who has joined this journal after our invitation and is now eminent member of our Editorial Board. Her aim is to publish quality peer reviewed all kinds of works in all the emerging fields of Medical science. We wish best of luck for her future. Feel free to ask any question.

The letter from MedWin did not explain how the Petitioner, with a background in civil engineering, is qualified to serve as an editor for a journal of “Medical science.” The multiple errors of grammar and capitalization in MedWin’s letter raise serious concerns, particularly when dealing with a publisher of scholarly papers. The same letter from MedWin refers to the Petitioner with the honorific “Dr.,” but the letter is from October 2019, nearly a year before the Petitioner received her doctoral degree. This error undermines the claim that MedWin carefully assesses the qualifications of its editors. In all, the Petitioner has not shown that her association with MedWin is strong evidence in her favor.

Another consideration is the progression of the Petitioner’s career at the time she filed the petition. Her proposed endeavor, as originally described, involved seeking a postdoctoral position. Material from the National Postdoctoral Association, submitted on appeal, refers to postdoctoral positions as “scholarly training for the purpose of acquiring the professional skills needed to pursue a career path.” Furthermore, when she filed the petition, the Petitioner was still a graduate student, not yet eligible to hold a postdoctoral position. Thus, the Petitioner’s proposed endeavor was, in part, to pursue further training at a future time when she was eligible for that training. In the broader context of the record, the Petitioner has not established that, as a student, she was well-positioned to engage in activities for which she had not yet obtained the necessary credentials and qualifications.

In sum, while the Petitioner has conducted productive research that has been useful to some of her colleagues, she has not demonstrated sufficient progress or success in her field, or interest in her work from relevant parties, to show that she is well positioned to advance her proposed research endeavor.

B. Whether on Balance a Waiver is Beneficial

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 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

The Petitioner initially stated that “her record of successful research in an area that furthers U.S. interests . . . satisfies [the third *Dhanasar*] prong.” In response to the RFE, the Petitioner stated: “Since the evidence in the record shows that [the Petitioner’s] work advances U.S. interests, and that she is well positioned to advance the proposed endeavor, it is readily apparent that [the Petitioner] satisfies [the third] prong.” But the cited factors relate to the first two *Dhanasar* prongs, and does not address the separate third prong sufficiently to meet the Petitioner’s burden.

The Petitioner also stated that “because her status as a PhD student is temporary in nature, the attainment of a labor certification would be impractical in this case.” The record shows that the Petitioner received her doctoral degree in August 2020, more than a year before she made this argument in September 2021. Also, the F-1 nonimmigrant classification exists specifically so that

foreign students can study in the United States; the temporary nature of graduate study is not, itself, an argument in favor of permanent immigration benefits. Likewise, noncitizens are able to train in temporary postdoctoral positions in nonimmigrant status. Permanent immigration status is not necessary for either graduate study or postdoctoral training, and therefore the Petitioner's desire to undertake such training is not inherently a strong basis for finding that a waiver of the job offer requirement would benefit the United States.

While the initial submission included a letter offering her a postdoctoral position at [redacted] upon completion of her doctorate, there is no evidence that she took that position. Instead, her response to the RFE included a letter offering her "a Postdoctoral Researcher position . . . at [redacted] University with a start date of October 6, 2021." The Petitioner did not say whether she had accepted this offer. Rather, she indicated that she was "planning to continue as a Postdoctoral Associate in the near future." [redacted] University is in [redacted], Maryland; when the Petitioner filed the appeal in December 2021, she provided a residential address in California.

We concluded that the petitioner in *Dhanasar* met the third prong in part because he had "played a key role" in federally funded projects. *Id.* at 893. In the case now before us, the Petitioner has not established a comparable record. The Petitioner has shown that she participated in a project funded by the National Science Foundation (NSF), and her doctoral advisor asserted that the Petitioner "worked as a vital member of this NSF project," but the Petitioner has not shown that the NSF considered the Petitioner to play a key role in that research or was aware of her participation, or that the Petitioner was involved in conceiving the project rather than joining it at a later date. In contrast, the individual in *Dhanasar* "initiated or is the primary award contact on several funded grant proposals and . . . is the only listed researcher on many of the grants." *Id.* at 893, n.11. The Petitioner has not shown that she has been driving or initiating research. Rather, she has trained under the supervision and direction of university faculty, who appear to have obtained grant funding before the Petitioner was involved in the projects.

The Petitioner's proposed endeavor involves an important area of research, but she has not established that, on balance, a waiver of the statutory job offer requirement would benefit the United States. By statute, researchers are presumptively subject to a job offer requirement, either with a labor certification under section 203(b)(2) of the Act, or without, under section 203(b)(1)(B) of the Act. The Petitioner has not met her burden of proof to demonstrate that she qualifies for an individual exemption from this broad requirement.

Because the Petitioner has not met the required second and third prongs of the *Dhanasar* analytical framework, we conclude as a matter of discretion that she has not established eligibility for a national interest waiver.

ORDER: The appeal is dismissed.