



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

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

In Re: 26559912

Date: MAY 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, 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 the substantial merit and national importance of the Petitioner's proposed endeavor, and thus that he was eligible for, and did not otherwise merit, 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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;
- 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

At the time of filing, the Petitioner was an Associate Research Scientist at [redacted] University. The evidence shows that he was awarded a doctoral degree in surgery in 2015 by [redacted] University. He proposes to continue performing clinical research in the mechanism and treatment of cardiovascular disease.

A. Eligibility for the EB-2 Classification

As stated above, before conducting an analysis of a petitioner's eligibility for a national interest waiver under the *Dhanasar* framework, USCIS must first determine the individual's eligibility for the underlying EB-2 immigrant classification. Although the Director indicated in her request for evidence (RFE) that the Petitioner holds an advanced degree and no further evidence was needed on this issue, an RFE is not a final decision, and she did not address the issue of the Petitioner's eligibility for the EB-2 classification in her decision. On remand, the Director should analyze the evidence in the record and articulate whether the Petitioner qualifies as a member of the professions holding an advanced degree. If the Director determines that the Petitioner does qualify for the EB-2 classification, she should then analyze the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework.

B. National Interest Waiver

The first prong of the *Dhanasar* analysis, which considers the substantial merit and national importance of the proposed endeavor, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

In her decision, the Director initially determined that the Petitioner's proposed endeavor was not of substantial merit because the record lacked a detailed description of the proposed endeavor, and because the record lacks documentary evidence of its substantial merit. However, she later indicates that the proposed endeavor does have substantial merit. After review, we conclude that the record does sufficiently establish the proposed endeavor's substantial merit.

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).

Our precedent decision in *Dhanasar* noted that an endeavor’s substantial merit may be established without evidence of economic impact, providing the examples of endeavors relating to research, pure science, and the furtherance of human knowledge. *Id.* In this case, the Petitioner articulated his intent to continue pursuing clinical research on cardiovascular diseases, and specifically described his continuing work in this area funded by the National Institutes of Health. In addition, a letter from his scientific advisor at [] explains the importance of this research to the development of pharmaceutical products for the treatment of cardiovascular diseases. As the Petitioner proposes to engage in clinical research in the area of health and has provided sufficient details regarding this research, we conclude that his endeavor has substantial merit.

Turning to the national importance of the Petitioner’s proposed endeavor, the Director’s decision contains a critical error which must be addressed on remand. Specifically, in discussing the broader implications of the proposed endeavor, she describes a plan to “maximize sales in the housing market [*sic*],” and concludes that this endeavor’s impact would not go beyond the economic benefit to individual companies. As the Petitioner’s proposed endeavor does not involve the housing market, but clinical research of cardiovascular diseases, on remand the Director should consider the evidence in the record (including the evidence submitted with the Petitioner’s appeal) to determine whether this specific proposed endeavor is of national importance. In addition, should the Director conclude that the Petitioner’s endeavor is of national importance, and thus meets the first prong of the *Dhanasar* framework, she should then evaluate whether the record establishes his eligibility under the second and third prongs, and whether he otherwise merits a national interest waiver as a matter of discretion.

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