



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26762198

Date: MAY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification, 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 record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 sustain 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 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

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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.² 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.

For the first prong of the Dhanasar framework, the Director determined that the Petitioner's endeavor has substantial merit and is of national importance. Upon review of the record, we agree that the Petitioner has established that he meets the first prong of the Dhanasar framework.

A. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to 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. Dhanasar, 26 I&N Dec. at 890.

The Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner was well positioned to advance the proposed endeavor. Upon de novo review, we conclude that the record does establish that the Petitioner is well positioned to advance his proposed endeavor.

The record includes the following: the Petitioner's curriculum vitae; academic records³; recommendation letters from his colleagues; independent references from professors at [redacted] University, University [redacted] University of [redacted] University; multiple published journal papers co-authored by the Petitioner; citation records for his journal papers; research papers, scientific books, and databases referencing the Petitioner's work; records of research projects the Petitioner worked on that were funded by NIH and the U.S. Department of Justice; news articles relating to the Petitioner's research; and a patent for the Petitioner's research.

The Petitioner plans to continue working as a postdoctoral associate with [redacted] University Medical Center to advance his endeavor. The record includes a letter of recommendation from his colleague, [redacted], professor of surgery at [redacted] University Medical Center, explaining he has worked with the Petitioner on several federal grants and describes the accomplishments of the Petitioner's research projects while working at [redacted] University Medical Center. [redacted] details the Petitioner's "instrumental" involvement in a NIH funded research project studying aptamers for

² The Petitioner received a doctor in philosophy (Ph.D.) in biochemistry from [redacted] University in 2019.

³ For purposes of assessment under the second prong, USCIS considers an advanced degree in the fields of science, technology, engineering, and mathematics (STEM) tied to the proposed endeavor and related to work furthering a STEM area important to U.S. competitiveness or national security an especially positive factor to be considered along with other evidence. See generally 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policy-manual>.

its use in the cardiovascular disease field. [redacted] believes the research found a potential use of aptamers as therapeutic agents to control blood clotting, which would help patients with COVID-19 and other conditions associated with blood clotting, as well as patients undergoing heart surgeries.

A letter from [redacted], associate professor of chemistry and biochemistry at [redacted] University, attests to the Petitioner's abilities as a biological science researcher. [redacted] describes the Petitioner's contributions to research projects related to "aptamer isolation, engineering, and biosensor development for drug detection", and "toward the isolation of functionalized aptamers and nucleic acid-based catalysts" for pharmacology applications. Specifically, his work contributed to discovering rapid cocaine detection. The record indicates the Petitioner's projects at [redacted] [redacted] University resulted in publication of the research, numerous citations in scientific journals, references to the project in other research articles, it being a foundation for other research projects, and patenting an invention for rapid test cocaine detection. [redacted] also explains that the Petitioner's work has applications in a variety of fields, "including clinical medicine, drug delivery, food safety, and environmental protection", and "he possesses both the skill and expertise to excel in the topics of aptamer isolation, engineering, and biosensor development for pharmacology applications."

Independent reference letters from experts in the field of biochemistry attest to the importance of the publication of articles authored by the Petitioner in reputable journals. [redacted] professor in the department of chemistry at [redacted] Institute for Nanotechnology at University of [redacted] Canada, praises the Petitioner's work in aptamers engineering research and acknowledges benefiting from his work having highlighted the Petitioner's research in his published articles.

The letters emphasize the Petitioner's research work being recognized nationally and internationally and having an impact on the biological science research community and the healthcare industry. The letters, supported by other evidence in the record, indicate the Petitioner's journal papers receiving significant citations, thereby showing his work has been highly cited and utilized by other researchers.

The record demonstrates that the Petitioner's education, his experience and accomplishments in his STEM field, the significance of his roles in research projects, and the interest and funding from government entities are relevant, probative, and material proof of being well positioned to advance the proposed endeavor.

Accordingly, we find the Petitioner has demonstrated that he satisfies the second prong of the Dhanasar framework.

B. Whether on Balance a Waiver is Beneficial

The third prong requires a 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, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process.

In each case, the factor(s) considered must, taken together, establish 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. *Dhanasar*, 26 I&N Dec. at 890-91.

USCIS considers the following combination of facts contained in the record to be a strong positive factor: possession of an advanced degree in science, technology, engineering, or mathematics (STEM); engagement in work furthering a STEM area important to U.S. competitiveness; and that the individual is well positioned to advance the proposed STEM endeavor of national importance.⁴

The Director determined that the Petitioner had not satisfied the third prong of the *Dhanasar* framework. Upon *de novo* review, we conclude that the waiver of the labor certification requirement for the Petitioner would, on balance, be beneficial to the United States.

The evidence demonstrates that, as a biochemist researcher with a record of published influential research projects advancing drug detection, drug delivery, and therapies for diseases, the Petitioner possesses experience and expertise in his STEM field. The evidence also demonstrates the public health benefits associated with the Petitioner's progress with aptamer research to advance drug detection, drug delivery, and treatment methods for blood clotting. In addition, letters from experts in the field provide a reasoned analysis of why the labor certification process is not well suited for discovering highly skilled scientists and researchers. Based on the Petitioner's history of successful research and the significance of his proposed work to advance U.S. scientific and public health interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming other qualified U.S. workers are available.

Accordingly, we hereby withdraw the Director's decision and find the Petitioner has demonstrated that he satisfies the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

⁴ See generally 6 USCIS Policy Manual, *supra* at F.5(D)(2).