



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

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

In Re: 24510137

Date: MAY 31, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a thermal R&D engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified as an advanced degree professional, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,<sup>1</sup> grant a national interest waiver if the petitioner shows:

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<sup>1</sup> *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 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

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>2</sup> Accordingly, the remaining issue to be determined on appeal 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. 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 Petitioner is currently employed as a senior thermal R&D engineer for [REDACTED] where he claims to conduct research in the area of thermal science, phase change heat transfer, and fluid flow simulation.<sup>3</sup> He stated that he is “focusing on high-power electronics cooling technology, data center thermal management, and phase change heat transfer, which are critical for the U.S. nation.” He further stated:

I developed the novel structures of copper nanowires, microscale structures, and biomimetic structures. These structures improve critical heat flux and heat transfer coefficient and thus enhance high power electronics cooling efficiencies, such as data centers, quantum computers, and high dash power laser generators. Another significant benefit would be improving the national environment by reducing CO2 emissions while minimizing energy consumption. These are associated with high power electronics cooling efficiency and thermal performance. Finally, this technology is crucial to keep USA at the uppermost level in electronics cooling technology, high power laser generators, artificial intelligence (AI), and environment protection. Hence, my research has both substantial merit and national importance.

The Petitioner also submitted letters of recommendation, conference materials, peer-reviewed articles and journal publications which he claimed demonstrated his expertise and professional experience as a researcher in the field of thermal science.

The Director determined that the initial evidence was insufficient to demonstrate that that the Petitioner was eligible for a national interest waiver, and issued a request for evidence (RFE). In response, the Petitioner submitted a new statement from the Petitioner regarding his proposed endeavor. He stated:

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<sup>2</sup> The record reflects that the Petitioner earned a Ph.D. in mechanical engineering from [REDACTED] University in 2019.

<sup>3</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position with [REDACTED] to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

As a mechanical engineering PhD graduate who has made significant contributions to the field of thermal science, it is always my passion to apply what I learned into an industry setting. As of now, I am a Senior Thermal R&D Engineer at [redacted] a world leading company that provides interconnect solutions for the information, communications and commercial electronics markets. From the past, I have also gained extensive and comprehensive research experiences in heat transfer and thermal management. In particular, I have made substantial contributions to the field of two-phase flow and boiling heat transfer, which are significant to the improvement of thermal management of electronics, heat exchangers, spacecraft avionics, etc. I plan to continue my research and make a greater impact in the field after my immigration to the U.S.

....

My research has significant meanings to the American thermal science industry. High-capacity heat transfer techniques with high heat transfer efficiency are urgently needed in many industrial areas, such as integrated electronic devices, high-powered data centers, high power density laser generators, and nuclear power plants. Boiling heat transfer has been extensively used in those thermal management applications because it utilizes the latent heat of liquid-vapor phase change. Since data center immersion cooling and high power electronics cooling technology can be readily applied for information, communication, and commercial electronics applications, my extensive knowledge and expertise in this area have significantly improved the overall thermal management and cooling technology. My heat transfer and thermal management related expertise and experience precisely matched this field.

....

The success of my research work will substantially benefit the related research fields and thermal science industry in the US, and American people. Thus, my work is majorly significant, and the achievements are of the utmost importance in advancing thermal management and cooling technology. Furthermore, my work has been widely implemented by my peers. Researchers from top universities and research groups from the United States and other countries have discussed the significance of my contributions and the importance of my continued work. My past and current achievements suggest that I will continue to provide substantial benefits to the United States.

The Petitioner also submitted additional documentation, including testimonial letters, industry reports and articles, citation statistics, and an executive order about clean energy.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner submits a brief asserting that the decision to deny the petition was in error and that he is eligible for a national interest waiver.

The Petitioner stated that he will continue to work for his employer as a senior thermal R&D engineer, and claimed his duties will include research in the field of thermal science. While the record describes his past work and research in detail, the Petitioner offers little detail about the proposed endeavor. In

other words, the Petitioner describes the proposed endeavor in terms of what he has already done, but he does not outline in specific detail any new research projects he will undertake. The Petitioner generally asserts that his work has broad application to a variety of industrial areas and products, such as integrated electronic devices, high-powered data centers, high power density laser generators, and nuclear power plants.

We note that although the Petitioner described his proposed endeavor as conducting research, a letter from his employer does not explicitly include research as part of his senior thermal R&D engineer position. Specifically, the letter states that the Petitioner will provide thermal engineering support to program lead engineers, and indicated that the majority of his time would be devoted to activities such as setting up test fixtures with computerized data acquisition systems and analyzing data and refining test component designs, producing reports on test setup, test procedures, results and data analysis. While the position title of “thermal R&D engineer” suggests that the Petitioner has specific projects on which to work, we have little information concerning any such projects and whether they are research-based. Here, we discern a distinction between engineering duties as part of his senior thermal R&D engineer role and research as part of his proposed endeavor, but we do not have sufficient information with which to determine whether or how they differ. It is not known how much time the Petitioner would devote to his proposed endeavor while also executing his engineering duties for his employer.

The Petitioner submitted evidence of his publications and citation record to establish how his past research success suggests that his future endeavor will have a similar impact. Most of the Petitioner’s research publications were produced while the Petitioner was a graduate researcher. While we acknowledge that evidence of the impact of his past work provides a basis to suggest that his future work will have a similar impact, this past research acclaim does not in itself establish the national importance of the proposed endeavor. Here, the Petitioner has not identified the specific nature of his proposed future activities so that we might determine the endeavor’s possible impact, nor has he identified how any future research would be disseminated into the community such that its potential can be properly evaluated. Moreover, as noted above, the Petitioner has not sufficiently explained what portion of his time will be devoted to the engineering duties, and how performance of those duties in the course of his employment could detract from the time he might devote to research. The Petitioner has not established how his past research record supports a finding that his future work will have a similar impact or that such impact would rise to the level of national importance.

Even if we assume that the Petitioner conducts research as a part of his duties at [redacted] a conclusion not supported by the record, this still does not adequately address how his research would be known widely enough to have a broader impact rising to the level of national interest. As [redacted] is a private firm that presumably solicits business from clients and customers, it is not apparent that any internal research discoveries would be made publicly available rather than maintained as proprietary information. In addition, the Petitioner does not offer a sufficiently direct connection between his research and sustainable energy improvements that might be produced as a result of his findings in the field of thermal science. Accordingly, we conclude that the Petitioner must establish a more direct connection between the proposed endeavor and the broader implications of it.

On appeal, the Petitioner asserts that his work closely aligns with the goals of the U.S. Office of Energy Efficiency and Renewable Energy (EERE), whose goal is to transition America to net-zero greenhouse gas emissions by 2050. He further points to EERE’s establishment of the Solar Energy Technologies

Office (SETO) to accomplish this goal, noting that his research will further their renewable energy goals. However, the Petitioner does not claim, nor does the record contain evidence, that EERE, SETO, or any other U.S. entity has funded or intends to fund the Petitioner's research. Moreover, there is no documentation suggesting that EERE or SETO incorporated his research into any of their policies or practices. The Petitioner has not established that his research has informed sustainable energy policy or that his proposed endeavor has national importance.

The record also includes letters of support from academics specializing in the fields of mechanical engineering and thermal science who speak favorably about how the Petitioner's past research has contributed to the field of thermal science.<sup>4</sup> On appeal, the Petitioner asserts that these letters have discussed the broad impact of his proposed endeavor to the overall national interest of the United States, and demonstrate that his research in the areas of thermal technology and thermal transfer management will improve the sustainable energy sector. In examining the authors' claims concerning the Petitioner's past research, we observe that the impact of his research appears limited to academia. Moreover, the authors demonstrate little knowledge of the Petitioner's work since he left academia and began his position with [redacted] and do not offer information concerning the Petitioner's proposed endeavor. Overall, we observe that the authors broadly report the same information about the Petitioner's past research topics. While research must add information to the pool of knowledge in some way in order to be accepted for publication, this alone is insufficient to substantiate a claim of impact to the field. The authors offer little detail to substantiate a finding that the Petitioner's research has affected the thermal science field as a whole.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, although the authors discuss the nature of the work the Petitioner has performed in the past, they offer little specific information concerning the Petitioner's prospective future endeavor. As such, these letters are of little probative value as they do not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Petitioner also presented articles and industry reports discussing the importance of thermal technology and energy sustainability, and thermal science in general, in addition to an executive order "catalyzing America's clean energy economy through federal sustainability." However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* While the articles and reports offer useful background information, they are of little probative value in this matter as they do not discuss the impact of the Petitioner's specific proposed endeavor.

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<sup>4</sup> While we may not discuss every piece of evidence individually, we have carefully reviewed and considered each one.

Further, 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 imprecise nature of the Petitioner's proposed future research does not sufficiently demonstrate how it would impact the thermal science field and economy more broadly, as opposed to being limited to his employer and its customers. Simply obtaining employment in a worthy field or industry, such as thermal science, does not warrant a national interest waiver. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's proposed research does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

In addition, the Petitioner has not sufficiently demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The evidence does not show that the Petitioner's activities performed during his employment with [redacted] would have economic impacts beyond the clients and customers served by his employer such that it will have broader implications for businesses in the United States.

We note the Petitioner's reference to our non-precedent decision concerning a national interest waiver for a geosteering engineer. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). 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. Moreover, the Petitioner has not provided evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision.

Finally, we note the Petitioner's statements regarding his expertise and prior career accomplishments in the field of thermal science. These statements, however, address aspects of the second *Dhanasar* prong but do not address how the proposed endeavor in the United States has broader implications beyond his immediate employer and its clients, as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner's focus on appeal on the "role and importance of marketing" in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not adequately described his proposed endeavor. Furthermore, to the extent that his proposed endeavor can be understood, we conclude that the record does not contain sufficient evidence to establish its national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.