



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

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

In Re: 29049589

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a senior researcher and molecular bioscientist, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she 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 withdraw the Acting Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) 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 discretion,² 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

The Acting Director determined that the Petitioner was a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner is a senior researcher at the [REDACTED] [REDACTED]. She states that her work includes “a new genome editing tool called CRISPR, which is a technology that can be used to edit genes and, as such, will likely change the world.” She states that her proposed endeavor is “to continue research on developing novel techniques for genome editing tools to change the determined genome of the living organism with the goal of curing genetic disease and creating more efficient and durable crops production.”

With the initial filing the Petitioner submitted evidence of her education and experience, a personal statement describing her proposed endeavor and claimed eligibility for a national interest waiver, as well as recommendation and support letters, expert opinion letters, and evidence of her peer-reviewed publications and citations.

Following initial review, the Acting Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish her eligibility for the national interest waiver. The Petitioner’s response to the RFE includes an updated personal statement, additional expert opinion letters, and additional evidence of citations to her research.

After reviewing the Petitioner’s RFE response, the Acting Director determined that the Petitioner satisfied the elements of the first prong of the *Dhanasar* framework, but not the second prong (showing her to be well-positioned to advance the proposed endeavor), or the third prong (that on balance, waiving the job offer requirement would benefit the United States).

² 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).

³ The record demonstrates that the Petitioner holds the equivalent of a U.S. doctoral degree awarded in 2005. See 8 C.F.R. § 204.5(k)(3)(i)(A).

On appeal, the Petitioner asserts that the Acting Director did not provide an analysis of the evidence in the record or describe its deficiencies. She further asserts that the Acting Director misapplied the framework set forth in *Matter of Dhanasar* and imposed a higher standard of proof.

To determine whether a petitioner 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* at 890.

In her decision addressing the second *Dhanasar* prong, the Acting Director acknowledged the Petitioner's education, publications and support letters. She then states, "we find that his [sic] research has not been shown to be influential or progressive in the field." The Acting Director does not provide a discussion of any of the evidence in the record to explain how the record is deficient in demonstrating that the Petitioner is well-positioned to advance her proposed endeavor.

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. *Id.* at 890-91.

In addressing the third *Dhanasar* prong, the Acting Director states that the Petitioner has not submitted documentary evidence. However, the record does include documentary evidence in support of the third prong, including the Petitioner's personal statement (addressed under the heading "Urgent National Interest in Future Research Plans"), four independent advisory opinions discussing the Petitioner's critical role in ongoing research with significant value, and evidence that the Petitioner is the primary researcher on a project funded through a grant of over \$1.8 million by the U.S. National Institutes of Health. The Acting Director's decision lists the potential factors to be considered but does not apply any factors to the Petitioner's evidence or explain why the evidence did not demonstrate the benefits of a waiver of the job offer, and thus of a labor certification.

The Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Acting Director did not adequately explain how the evidence in the record led to the determination that the Petitioner did not establish that she is well-positioned to advance her proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. The lack of detail in the denial notice did not give the Petitioner a sufficient opportunity to prepare a substantive appeal. Therefore, we will withdraw the Acting Director's decision and remand the matter for further consideration.

If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

III. CONCLUSION

In concluding that the Petitioner submitted insufficient evidence that she is well-positioned to advance her proposed endeavor, the Acting Director omitted relevant factors and overlooked evidence. In concluding that the Petitioner did not demonstrate the benefits to the United States of a waiver of the job offer, and thus of a labor certification, the Acting Director did not specify reasons for this determination.

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