



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

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

In Re: 29137131

Date: JAN. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computational materials scientist, seeks 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 Petitioner 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, under section 203(b)(2) 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. 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

- 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.²

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).

² *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. EB-2 Immigrant Classification

As stated above, a petitioner must establish eligibility for the EB-2 classification in order to be eligible for a national interest waiver. Here, the Director's decision does not include a determination regarding the Petitioner's eligibility for the underlying EB-2 visa classification as an advanced degree professional. Because we agree with the Director's conclusion regarding the Petitioner's eligibility for a national interest waiver, as will be explained below, we reserve the issue of her eligibility for the underlying EB-2 immigrant classification.³

B. National Interest Waiver

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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

As a preliminary matter, we will address the Petitioner's claim on appeal that the Director's request for evidence (RFE) and denial decision "manifest[] the overall lack of care in adjudicating the I-140 petition." As the Petitioner noted on appeal and before the Director, the RFE's statement that "he intends to work as a 'self-employed and independent individual'" misgendered her and cited to a quotation that does not appear in the record. In addition, the denial decision erroneously indicates that the Petitioner's personal statement was submitted within her RFE response, and contains the incomplete sentence "istration field." We acknowledge these errors on the part of the Director. However, while such errors are regrettable, a review of the adverse decision as a whole reveals that the Director conducted a review of the evidence and provided sufficient support for the conclusions reached regarding the Petitioner's eligibility, based on the evidence of record.

The Petitioner's initial evidence indicates that she received a master's degree in geology in 2021 from the [REDACTED]. At the time of filing the petition in September 2022, she was pursuing a Ph.D. degree in physics at the [REDACTED], where she also worked as a graduate teaching assistant.⁴

At initial filing, the Petitioner provided a statement indicating:

My proposed endeavor is to employ multiscale simulation techniques to innovate novel functional materials to advance areas such as Quantum Information Science and Technology (QIST) and address energy, environment, and other challenges.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

⁴ The record indicates that in Bangladesh the Petitioner previously received a bachelor's degree and a master's degree in physics from [REDACTED] and an additional master's degree in physics from [REDACTED].

....

Immediately after my master's at the [redacted], I started a Ph.D. program in Physics at the [redacted] in Fall 2021. In my Ph.D. research, I am investigating the electronic structures, optical properties, and thermodynamic stability of a quantum mechanical device called a Single Photon Emitter (SPE) made of several material systems. SPE is a[] critical component in the physical realization of quantum computation schemes I am applying state-of-the-art computational methods to evaluate the stability and optical properties of two-dimensional (2D) structures that include hexagonal boron nitride (h-BN), gallium nitride (GaN), silicon carbide (SiC), and aluminum nitride (AlN). While the 2D structures have the advantage of lesser phonon or heat interference, challenges like inhomogeneous emission energy and poor photon indistinguishability need to be overcome.

After completion of my Ph.D., I intend to join as a high-skilled scientist in the emerging field of [QIST]. The United States government has identified QIST as a thrust sector for its economic and national security and signed H.R. 6227/S. 3143, The National Quantum Initiative Act, into law in December 2018. This law delineates a long-term, multiagency program spanning the National Institute of Standards and Technology, National Science Foundation, and Department of Energy. Industry giants like [redacted] [redacted] are investing heavily in the design and optimization of all aspects of the quantum computer. . . . With my knowledge of multiscale simulations, I can contribute significantly to realizing the goals set by U.S. Government expressed through The National Quantum Initiative Act (2018)⁵

In addition, the cover letter accompanying the petition claimed that the Petitioner “proposes to build upon her past work by innovating novel functional materials using multiscale simulation techniques in an effort to advance areas such as QIST to address major challenges in energy, security, environment, and other domains.” It asserts her proposed endeavor involves “continuing to conduct research and to publish and present her findings.” The letter asserts that her proposed endeavor has substantial merit and national importance because it “advances the pivotal area of [QIST]” and “aligns with the goals and positions of the United States government and its agencies,” including “President Biden's 2022 issuance of two new directives aimed at advancing quantum technologies.”

The Petitioner provided excerpts of university and government articles and reports, including an article from Science.osti.gov, discussing the QIST field (described as a broad field of science and engineering that applies quantum mechanics to computing, networking, and sensing); mentioning prior QIST-related technologies such as semiconductor microelectronics, photonics, global positioning, and magnetic resonance imaging; and examining future applications in the field such as the development of quantum processors for computing applications and next-generation positioning systems. The Petitioner also submitted the table of contents of the 2018 National Quantum Initiative Act and the introduction page to the National Quantum Initiative Supplement to The President's FY 2022.

⁵ The Petitioner also discussed the research work related to her past master's theses in physics and geology, specifically the development of novel magnetic materials for designing efficient transformers and magnetic cores and the abiotic degradation pathways of the herbicide glyphosate.

The first prong relates to substantial merit and national importance of the *specific proposed endeavor*. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner, however, did not offer a specific proposed endeavor as required under *Dhanasar*. Instead, the Petitioner broadly claimed that she plans to “join as a high-skilled scientist in the emerging field of [QIST]” and that her “ongoing and future research on quantum computing” will help the county “establish itself as a global leader in quantum information technology.” The Petitioner did not further elaborate and explain or identify what type of research she intended to pursue in the fields of computational materials science and QIST. Moreover, the Petitioner indicated her previous and current research work without discussing her prospective endeavor.

Similarly, although the cover letter broadly asserted that the Petitioner “proposes to build upon” her past research in computational materials science, it did not contain specific details, elaborate on prospective research, or differentiate her prior research with her intended research. The Director concluded that the Petitioner did not submit a detailed description of the proposed endeavor,” noting that “[w]hile a petitioner need not have a job offer, he must provide the specifics of his proposed endeavor.” The Director’s RFE included a request for “[e]vidence which establishes that the Petitioner’s proposed endeavor has substantial merit” and “[a] detailed with description of the proposed endeavor and why it is of national importance.”

In response to the Director’s RFE, the Petitioner asserted that, contrary to the Director’s assertion, “[her] proposed endeavor was thoroughly defined in her original filing.” The response referenced the Petitioner’s same personal statement discussed above and evidence contained in her initial submission, showing that she was pursuing a Ph.D. degree in physics at [redacted] and working as a graduate teaching assistant. She claimed that her research at [redacted] involves “the fundamental quantum behaviors of [SPEs], with the ultimate goal of implementing the technology in a quantum computing context.” The response letter, however, did not provide any further details relating to a specific proposed endeavor in the fields of computation materials science, quantum computing, and QIST.

Moreover, the Petitioner’s response included the same Science.osti.gov article mentioned above, an excerpt of an article providing an overview of quantum computing as a technology and assessing its promise and constraints, and an article regarding the expected growth of the U.S. quantum computing market. While the articles appear to relate to her field of computational materials science, the Petitioner did not demonstrate the nexus between her unidentified proposed endeavor and the issues in the articles. Because the Petitioner did not identify her specific proposed endeavor, she did not establish how her prospective endeavor relates to any of these topics.

On appeal, the Petitioner claims that “a fair amount of insight was provided through . . . the personal statement[.]. However, more insight could be provided if the request was made in the RFE itself. The Petitioner did not get that opportunity.” We observe, as discussed, that the RFE advised the Petitioner that her initial evidence lacked “the specifics of his proposed endeavor.” In addition, the Director’s decision, as required by 8 C.F.R. § 103.3(a)(1)(i), explains the specific reasons for denial and addresses evidentiary deficiencies in the record. The Petitioner therefore had adequate notice and opportunity to address those deficiencies on appeal. On appeal, the Petitioner does not establish that she presented a specific proposed endeavor before the Director. Instead, the Petitioner maintains that the Director did not properly review her personal statement. As discussed, the Petitioner’s statement does not sufficiently show or identify her specific proposed endeavor.

For the reasons discussed, the Petitioner did not provide a specific proposed endeavor as required under *Dhanasar*. The record does not contain distinct, detailed information explaining the Petitioner's specific proposed endeavor. Instead, the Petitioner broadly claimed that she would conduct research in the fields of computational materials science, quantum computing, and QIST. She did not elaborate and articulate, for example, the type of research she intended to pursue. By comparison, as the Director noted, the petitioner in *Dhanasar* demonstrated that he intended to continue research into the design and development of propulsion systems for potential use in military and civilian technologies such as nano-satellites, rocket-propelled ballistic missiles, and single-stage-to-orbit vehicles. *Id.* at 892.

Because the documentation in the record does not show that she qualifies for the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the second and third prongs outlined in *Dhanasar*.⁶

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ See *Bagamasbad*, 429 U.S. at 25-26; see also *L-A-C-*, 26 I&N Dec. at 516, n.7.