



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

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

In Re: 29357590

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a scientist and researcher, 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 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 withdraw the 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. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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,¹ grant a national interest waiver if the petitioner shows:

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).

- 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 Petitioner proposes to work as a senior scientist and a researcher in the United States in the field of pediatric oncology. The Director did not make a determination whether the Petitioner is eligible for the underlying EB-2 classification.

A. Advanced Degree Professional

The Petitioner asserts that she is eligible for the EB-2 classification as an advanced degree professional; however, the Director did not evaluate her claim. On remand, the Director should evaluate the documentation submitted in the record to determine whether the Petitioner meets the requirements of an advanced degree professional.

B. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. Here, the Petitioner indicated that she intends to work as a senior scientist for the Division of Oncology at the [REDACTED] [REDACTED] or a similar employer. She further indicated that separate from her proposed employment, she will conduct research in the field of pediatric oncology, utilizing novel zebrafish models and molecular biology techniques in order to improve treatment outcomes for cancer patients. In support of this assertion, she submitted a personal statement, copies of her academic credentials, letters of recommendation, and articles and statistics regarding childhood cancer.

The Director's decision concluded that the first prong was met based on the Petitioner's submission of "support letters which attests to her research endeavors, the results of which is disseminated to others in the field through journals and conference presentations." However, the decision does not sufficiently explain the basis for this determination. As noted above, the Petitioner intends to seek employment as a senior scientist at a university and simultaneously conduct research in the field of pediatric oncology; however, she did not provide a timeline for when she would occupy each of these roles or whether the proposed endeavor involves the Petitioner performing in both of these positions either simultaneously or consecutively.

On remand, the Director should analyze the evidence to determine whether the record sufficiently identifies the proposed endeavor and demonstrates the endeavor has substantial merit and national importance. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.² In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation, and should keep in mind that it is the national importance of the

² See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policymanual>.

Petitioner's specific proposed endeavor that must be shown, not the importance of the overall field of pediatric oncology. An endeavor having significant potential on the broader implications for a field or region generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.³ The Director should review the record to determine whether the Petitioner has demonstrated her proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

C. Well Positioned to Advance the Proposed Endeavor

In the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. 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. *See Dhanasar*, 26 I&N Dec. at 890.

For *Dhanasar's* second prong, the Director stated that "the Petitioner has not demonstrated progress in her field which rises to the level of rendering her well positioned to advance her proposed research." However, the decision did not sufficiently explain the basis for this determination. On appeal, the Petitioner asserts that the Director's analysis of the second prong was "woefully deficient," noting that the decision "neglected to quote, describe, or even comprehensively list the additional evidence provided to further satisfy the second prong." The Petitioner also asserts that that the Director improperly imposed a higher standard of proof than a preponderance of the evidence and did not give due regard to the evidence in the record, including the Petitioner's education, experience in the field, publications and citation history, conference presentations, and letters of recommendation.

Although the Director's decision acknowledges the Petitioner's "education, publications, conference presentations, etc., and the support letters which sheds additional light on her accomplishments," the Director did not analyze this documentation or acknowledge additional documentation submitted to show the Petitioner is well positioned to advance her proposed endeavor. Upon review, we agree with the Petitioner's assertions that her evidence was not given due consideration. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal). The Director's decision did not adequately address the evidence submitted with the petition or in response to the request for evidence (RFE) in support of the second prong.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the Petitioner is well positioned to advance the proposed endeavor, and should articulate the basis for finding whether the evidence shows or fails to show that she is well positioned to advance

³ *See id.*

her endeavor. If the Director concludes that the Petitioner's documentation does not meet *Dhanasar's* second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

D. Balancing Factors to Determine Waiver's Benefit to the United States

As to the third prong of *Dhanasar*, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis and concluded that the Petitioner "has not submitted documentary evidence that demonstrates 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." On appeal, the Petitioner asserts that the decision "completely ignored" her evaluation of this prong as presented in her RFE response, and further "fails to engage with any of the evidence of the record that is relevant to this point" and thus constitutes an abuse of discretion pursuant to *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994).

The Director did not sufficiently acknowledge and address the evidence submitted with the petition or in response to the RFE as to the third prong, and did not discuss the evidence weighed in balancing the relevant considerations. On remand, the Director should address all of the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786.

III. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as an advanced degree professional. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if 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 Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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