



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

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

In Re: 33963897

Date: NOV. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a medical scientist, 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 Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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. *Matter of Dhanasar* states that U.S.

Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>1</sup> 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.

*Matter of Dhanasar*, 26 I&N Dec. 889.

## II. ANALYSIS

The Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. Based upon the evidence in the record that the Petitioner possesses the foreign equivalent of a Ph.D. in medical science, we agree. The Director also concluded that the proposed endeavor has both substantial merit and national importance. However, the Director found the Petitioner did not demonstrate eligibility for a national interest waiver because he did not establish that he is well-positioned to advance the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner contends that the Director misapplied our precedent decision in *Matter of Dhanasar*, mischaracterized or overlooked evidence in the record, and erred by evaluating the evidence in a “piecemeal” fashion, considering each piece of evidence in isolation, rather than evaluating the record in its totality. For the reasons discussed below, we agree with the Director that the Petitioner has not established that he is well-positioned to advance the proposed endeavor and therefore has not established eligibility for a national interest waiver.

The Petitioner proposes to investigate the mechanisms underlying autoimmune and inflammatory diseases to identify novel therapeutic targets and develop treatments for conditions such as multiple sclerosis and Alzheimer’s disease. The Petitioner states that he intends to continue to publish and present research to contribute to this field. As of the time of filing the petition, the Petitioner was working as a postdoctoral researcher at the

While the first prong of the *Dhanasar* framework focuses on the proposed endeavor and whether it has substantial merit and national importance, the second prong shifts the focus to the individual petitioner and whether they are well-positioned to advance it. To determine whether an individual 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. *Id.* at 890.

We first consider the Petitioner’s education, skills, knowledge, and record of success. The record shows that the Petitioner has obtained the foreign equivalent of a Ph.D. in medical science. Additionally, the Petitioner contends that his skills, knowledge, and record of success in related or similar efforts are demonstrated by his research, record of citations, and letters of recommendation.

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<sup>1</sup> See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

We consider the Petitioner's education, skills, and knowledge to be positive factors in support of his positioning to advance the proposed endeavor. Specifically, the Petitioner's Ph.D. in medical science and his work as a postdoctoral researcher relate to his proposed endeavor of investigating autoimmune and inflammatory diseases and developing treatments. As to his record of success in related or similar efforts, we acknowledge that the evidence in the record appears to demonstrate that the published works that the Petitioner has participated in and contributed to have been cited frequently by independent researchers at a rate that is high relative to others in field. While this is a positive factor, we do note that the works which have received the most attention appear to be those in which the Petitioner was one of several contributors. For example, in the Petitioner's most heavily cited work he was the tenth listed author.

The next factors applicable to the second prong of the *Dhanasar* framework are a model or plan for future activities and any progress towards achieving the proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner contends that he will pursue his proposed endeavor while conducting research at the [REDACTED] and that his citation record reflects his progress towards achieving the proposed endeavor. While we agree, as stated above, that the Petitioner's citation history is a positive factor in showing success in related or similar efforts, we disagree that the citation history sufficiently demonstrates progress toward achieving the proposed endeavor. As noted above, although the Petitioner appears to have participated in well-cited works, the record does not reflect that he was the principal or lead investigator in several of those works. Similarly, the record does not show that continuing in this postdoctoral position sufficiently demonstrates a model or plan for future activities. For example, the record does not show that the Petitioner has obtained or is working toward obtaining his own funding to pursue his proposed endeavor. Instead, the record appears to show that the Petitioner is assisting in projects that have been funded by other researchers. For example, in response to the Director's request for evidence (RFE), the Petitioner stated that he had begun contributing to research related to infectious diseases and their vaccines. The Petitioner did not establish that this relates to his proposed endeavor of researching autoimmune and inflammatory diseases and their treatments. The record does not sufficiently demonstrate whether the Petitioner is advancing his own research or primarily supporting the research of others. We therefore conclude that the record does not sufficiently demonstrate the Petitioner's model or plan for future activities or progress toward achieving the proposed endeavor.

The final factor enumerated in *Matter of Dhanasar* relates to evidence of interest from potential customers, users, investors, or other relevant entities or individuals. *Id.* Here, we similarly conclude that the evidence in the record does not weigh in favor of demonstrating that the Petitioner is well-positioned to advance the endeavor. Again, the Petitioner emphasizes on appeal his citation record as evidence of interest from relevant entities or individuals. Additionally, the Petitioner contends that his work has "drawn considerable interest from investors." In support of this claim, the Petitioner points to evidence that the research in which he has participated was supported by funding from various organizations. However, the Petitioner does not sufficiently explain or demonstrate how this prior research receiving funding supports the conclusion that his proposed endeavor will have similar interest or support. Moreover, the record does not establish the circumstances in which this funding was received, for example, whether the Petitioner was involved with applying for and receiving this funding. By contrast, in *Matter of Dhanasar*, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many

of the grants. *Matter of Dhanasar*, 26 I&N Dec. at 893, Fn. 11. The evidence in the record regarding the Petitioner's funding does not appear to be like in kind to the funding received by the petitioner in *Dhanasar*. While the record shows that the Petitioner has participated in research that has received funding, the record does not sufficiently establish that there is interest in or support for the Petitioner pursuing his proposed endeavor such that we would consider him to be well-positioned to advance it.

Not every individual who has conducted original research and published findings will be found to be well-positioned to advance their proposed endeavor. Rather, we must examine the factors set forth in *Matter of Dhanasar* to determine whether, for instance, the individual's education, skills, and record of success, their model or plan for future activities, their progress towards achieving the proposed endeavor, and the generation of interest among relevant parties supports such a finding. *Id.* at 890. In considering the record in totality, particularly the lack of funding or other concrete evidence of support for or interest in the Petitioner pursuing the proposed endeavor, we conclude that the Petitioner has not established that he is well-positioned to advance the endeavor.

Because the documentation in the record does not establish that the Petitioner is well-positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding his eligibility under the first and third *Dhanasar* prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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 the applicant is otherwise ineligible).

### III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.