



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

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

In Re: 20199211

Date: MAR. 9, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a “medical scientist in the field of dentistry,” seeks second preference 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 EB-2 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 qualified 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.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.²

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. 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 second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the 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

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

² To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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.

At the time of filing, the Petitioner was working as a part-time professor in the [redacted] Dental School (Brazil) Distance Teaching Program. In May 2019, she became "a full-time student in the two-year Advanced Education in General Dentistry Program at the University [redacted] [redacted]."

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner initially asserted that she intends to continue "working as a medical scientist in the dental field in the United States. Medical scientists conduct research dealing with understanding human diseases and improving overall human health. We engage in clinical investigation, research and developments, or other related activities."

In response to the Director's request for evidence (RFE), the Petitioner stated:

Currently I am enrolled in the Advanced Education in General Dentistry Training Program at the University [redacted]. The goal of this program is to provide training beyond the level of pre-doctoral education in Oral Health Care using applied basic and behavior sciences. . . . The program is designed to expand the graduates' knowledge and skills to enable them to provide comprehensive oral health care to a wide range of population groups.

* * *

I plan to continue working within the health system as a Medical Scientist in the field of dentistry applying my skills, education, experience, and knowledge to improve Americans' oral health by using top notch dentistry techniques while in clinic care, doing research that have [sic] the potential to find alternative treatments and solutions for oral health that will impact all Americans, and mentoring others peers [sic] ensuring those techniques and research are being mirrored.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

One of my plans is to provide dental care for the underserved population of the U.S.... [redacted] New York is amongst the poorest cities in the nation and more than half of its children live in poverty. I have been living in the [redacted] NY area for two years while doing my Dental education and that put me in highly [sic] advantage if I decide to stay in the city to find a position as a Medical Scientist in the field of dentistry.

My goal is also to work as a dentist either at a dental practice or for a government agency. I will also consider opening my own dental practice and teach my colleagues as an Associate Professor or Professor in the future.

* * *

As proof of my intentions to continue working in the U.S. as a Medical Scientist in the field with dentistry, I have applied for the Master of Science Health Professions Education Program at the University [redacted] and my admission is currently being reviewed.

I have also been admitted to the 12-month General Practice Dentistry Program at the University [redacted] scheduled to begin on June 23, 2021.

Furthermore, I have been also offered two positions to work as a General Dentist and as an Associate Dentist at two different dental practices in Florida.

The record includes the Petitioner's admission letter to the General Practice Residency Program at the University [redacted] She also presented unexecuted employment agreements with [redacted] and [redacted]

[redacted]⁴

In the decision denying the petition, the Director acknowledged both the substantial merit and national importance of the Petitioner's proposed endeavor "as a Medical Scientist in the field of Dentistry." However, the Director explained that the Petitioner's "proposed endeavor of working as a dentist in [redacted] NY or Florida" did not offer broader implications or substantial positive economic effects that would be considered commensurate with national importance.⁵

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

⁵ In addition to proposing to work as a Medical Scientist in the field of dentistry, the Petitioner asserted that her endeavor would involve practicing as a dentist and teaching as a professor. While both of these endeavors have substantial merit, the record does not establish that her proposed clinical and teaching work stand to impact the dentistry field or the U.S. healthcare industry more broadly, as opposed to being limited to the patients she serves and her dental students. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical work and teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Likewise, 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.

The record supports the Director's determination that the Petitioner has demonstrated both the substantial merit and national importance of her proposed work as a medical scientist advancing oral health research. For example, the Petitioner has submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through medical journals and conferences. Accordingly, we agree with the Director that the Petitioner's proposed oral health research meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, her proposed clinical and teaching work do not meet the first prong of the *Dhanasar* framework. Because the Petitioner's proposed oral health research offers broader implications for the field (unlike her proposed work as a dentist or teacher), our analysis under this prong will focus solely on whether she is well positioned to advance her proposed research relating to alternative treatments and solutions for oral health.

The record includes documentation of the Petitioner's curriculum vitae, academic and training credentials, employment experience, Brazilian professional certifications and licenses, published articles, and presented work. She also offered letters of support discussing her oral health research projects. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's research projects.⁶ For example, regarding the Petitioner's work aimed at evaluating the clinical usefulness of [REDACTED] in periodontal surgery, [REDACTED] clinical pharmacology professor at [REDACTED] University [REDACTED] indicated that the Petitioner and her peers "are designing a novel study about the benefits of [REDACTED] which is processed to be used as a [REDACTED] for surgical wounds. Although this research is still on the laboratory bench, the in vitro results are very promising." [REDACTED] also noted that "[f]urther clinical investigation is being planned and will involve a multicenter collaboration among universities in Brazil," but she did not explain how the Petitioner's research findings have been implemented, utilized, or applauded in the in the dentistry field.

With respect to the Petitioner's research relating to [REDACTED] [REDACTED] assistant professor at University [REDACTED] stated that the Petitioner's "study focused on examining the impact of this condition on tissues of the periodontal apparatus. This research guided other clinicians and dental professionals to control the periodontal health of [REDACTED] patients to increase their quality of life." While [REDACTED] asserted that the Petitioner's "research is so importance [*sic*] that it has been of [*sic*] cited and referred by other researchers and clinicians," the record does not include citation evidence to support his claim. Nor does [REDACTED] provide specific examples indicating that the Petitioner's research findings have generated positive interest among

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

relevant parties, have been implemented by others in the field, or otherwise reflect a record of success or progress rendering her well positioned to advance the proposed endeavor.

Regarding the Petitioner's research involving [redacted] postoperative dental pain management, [redacted] professor at University [redacted] indicated that he and the Petitioner have coauthored a study that "is in the final stages of review for publication, is of great importance for the dental community, and may mark a before and after in how pain management should be handled by dentists [redacted]". [redacted] further stated that the Petitioner's "collaboration in this study has been crucial for its development," but the record does not indicate that their work has affected pain management practices in the dental community or otherwise constitutes a record of success or progress in her research field.

As it relates to the Petitioner's education, the record indicates that she received a Dental Surgeon diploma from the University [redacted]⁷ a Master's degree in Clinical Pharmacology from [redacted] University [redacted] and postgraduate training in Oral Implantology, Periodontology, and Endodontics. While the Petitioner's education renders her eligible for the underlying EB-2 visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance her proposed research endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor and education is merely one factor among many that may contribute to such a finding.

With regard to her work experience, the record indicates that the Petitioner has served as a professor at both [redacted] Dental School and [redacted] practiced dentistry for both private and public clinics, and worked as a periodontist for the Brazilian Army. While the Petitioner's documentation indicates that she has clinical experience in the dentistry field, her evidence is not sufficient to demonstrate a record of success in academic research or a level of interest in her work from relevant parties signifying that she is well positioned to advance her proposed research relating to alternative treatments and solutions for oral health.

On appeal, the Petitioner contends that she has established "by a preponderance of evidence" that she "meets all the criteria for a national interest waiver" specified in the *Dhanasar* framework. With respect to the standard of proof in this matter, a petitioner must establish that she meets the eligibility requirements of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that her claims are "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

⁷ The record includes an academic credential evaluation indicating that this diploma is the foreign equivalent to a U.S. bachelor's degree.

The Petitioner also argues that the Director’s RFE was deficient because it “referred only partially to the evidence originally submitted” and included “contradictory statements.” In the decision denying the petition, the Director acknowledged the typographical errors in the RFE’s discussion of the Petitioner’s ineligibility under *Dhanasar*’s second prong. Nonetheless, the Petitioner’s response to the RFE included arguments and evidence specifically addressing her eligibility under prong two of *Dhanasar*.⁸ We note that the Director may, as a matter of discretion, request additional evidence if the record does not establish eligibility, but he is not required to do so. *See* 8 C.F.R. § 103.2(b)(8). Regardless, the Petitioner has had an opportunity to address the Director’s prong two analysis on appeal, and we review the record on a *de novo* basis. The appeal brief, however, does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director’s denial notice’s discussion of the evidence under *Dhanasar*’s second prong.

The record demonstrates that the Petitioner has conducted oral health research in both Brazil and the United States, but she has not shown that this work renders her well positioned to advance her proposed endeavor. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties support such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the dentistry field or that it has generated substantial positive discourse in the academic community. Nor does the evidence show that her research findings have been frequently cited by independent researchers or otherwise constitute a record of success or progress in advancing research relating to alternative treatments and solutions for oral health. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the 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. Here, the Petitioner claims that she is eligible for a waiver due to the impracticality of labor certification, her education and dentistry skills, her experience in the field, and the significance of her proposed work. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

⁸ Despite the RFE’s typographical errors, the Petitioner’s RFE response specifically stated: “We will once again go over the abundant amount of evidence that shows [the Petitioner] is well positioned to advance the proposed endeavor.” The RFE response offered a detailed and extensive discussion relating to the Petitioner’s eligibility under prong two of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established 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.