



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

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

In Re: 24227544

Date: APR. 5, 2023

Appeal of Texas Service Center Decision

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

The self-Petitioner, a researcher in the field of geospatial information management, seeks classification as a member of the professions holding an advanced degree and requests a waiver of this second-preference, immigrant visa category's normal requirement for a U.S. job offer and certification from the U.S. Department of Labor (DOL). *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to forego the requirement if a noncitizen's proposed U.S. employment is "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified as an advanced degree professional and "well-positioned" to advance her proposed research, which the Director also determined has "substantial merit." The Director, however, did not find the requested waiver to be in the national interest. On appeal, the Petitioner submits additional evidence, asserting demonstration of the "national importance" of her proposed research and the work's potential generation of significant U.S. benefits meriting a waiver grant.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner has not demonstrated the national importance of her proposed U.S. research. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their qualifications for the underlying immigrant visa category, as either an advanced degree professional or a noncitizen of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. This visa category normally requires a prospective U.S. employer to seek a noncitizen's services and obtain DOL certification to permanently employ them in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the need for a job offer/labor certification, a petitioner must demonstrate that waiving these U.S. worker protections is in the national interest. Section 203(b)(2)(B)(1) of the Act.

Neither the Act nor regulations define the term “national interest.” But we have established the following framework for adjudicating requests for national interest waivers. *See Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). If otherwise qualified as an advanced degree professional or noncitizen of exceptional ability, a petitioner may merit a waiver of the job-offer/labor certification requirement if they establish that:

- Their proposed U.S. work has “substantial merit” and “national importance;”
- They are “well-positioned” to advance their intended endeavor; and
- On balance, a waiver of the normal job-offer/labor certification requirement would benefit the United States.

Id.

II. ANALYSIS

The record shows that the Petitioner, a native and citizen of South Korea, earned bachelor and master of public administration degrees in her home country. She worked for the city of [] South Korea for nearly 40 years, developing and implementing policies for land administration and geospatial information management. The record shows the Petitioner’s development of systems to identify emergency evacuation spaces in buildings and assign virtual addresses to property, including not only buildings but also parks and alleys. Her developments received numerous awards - both in and out of South Korea - and proved useful in applications designed to protect people from natural disasters and crime.

In the United States, the Petitioner proposes to research policies on infrastructure, legal frameworks, and coordination mechanisms to collect, share, and use geospatial data more effectively. She submitted evidence that U.S. governments and policymakers use geospatial information and tools to: produce floodplain maps; conduct the national census; map foreclosed properties; and respond to natural disasters like wildfires and hurricanes. She states that geospatial data is also a “critical component of national security,” as “[e]ffective epidemiological monitoring builds on common geospatial information to track the spread of viruses, identify vulnerabilities, manage facilities, and gauge responses.” The Petitioner contends that her research would help the United States build capacity for using geospatial data to enhance decision-making and spur private-sector development of geospatial technologies.

The record supports the Director’s findings that the Beneficiary: qualifies for the requested immigrant visa category as an advanced degree professional; satisfied part of the initial prong of the *Dhanasar* framework for national interest by demonstrating the “substantial merit” of her proposed U.S. research; and met *Dhanasar*’s second prong as “well-positioned” to advance the proposed endeavor. On appeal, the Petitioner submits additional evidence asserting her demonstration of the remaining *Dhanasar* elements: the “national importance” of her proposed work; and its potential generation of significant U.S. benefits justifying a waiver of a job offer and labor certification.

For the following reasons, however, the Petitioner's appellate evidence does not demonstrate the purported national importance of her proposed research.¹

A. Eligibility at the Time of Filing

A petitioner must demonstrate their eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Contrary to the regulation, the Petitioner's appellate evidence does not demonstrate the national importance of her proposed research as of the petition's filing.

The Petitioner submits copies of a "Confirmation of Business Cooperation Plan" from a vice president of a South Korean geospatial technology company. The official states that, based on the Petitioner's "key roles" in the company's prior development of spatial image maps, it wants to collaborate with her again in the second half of 2023, when it plans to introduce geospatial products in the United States. Also, copies of email messages and other documents show that the Petitioner had an online, video meeting with a researcher from a U.S. university laboratory. The Petitioner states that the researcher asked her how she made an algorithm to design an AoT system in South Korea and her opinion on the use of AoT in the United States.

The Director found the record lacking evidence of the Petitioner's "past research showing that her proposed research could broadly impact her field." The Petitioner contends that her appellate evidence addresses the deficiency and demonstrates the interest of U.S. research institutions in applying her work and expertise to current projects.

The evidence, however, shows the Petitioner's receipt of the business cooperation plan and her meeting with the U.S. university researcher in July 2022, after both the petition's September 2020 filing and its April 2022 denial. Thus, contrary to 8 C.F.R. § 103.2(b)(1), the Petitioner's appellate evidence does not demonstrate the national importance of her proposed U.S. research *at the time of the petition's filing*. The Petitioner therefore has not demonstrated the national importance of her proposed work.

B. Sufficiency of the Evidence

Also, the Petitioner's appellate evidence lacks sufficient details to establish that her proposed work could have a broad impact on the field or the United States. The business cooperation plan states the South Korean company's need for her "ability to plan space in large scale of space planning and ability to systematically address and manage objects in planning narrow spaces" for the company's U.S. "construction engineering registration" project. But the record does not sufficiently indicate the project's "potential prospective impact." *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.")

¹ The Petitioner does not challenge the Director's findings regarding the national importance of her proposed work. The record shows that the Director sufficiently notified the Petitioner of required evidence and afforded her a reasonable opportunity to respond. Although we could decline to consider her appellate evidence under *Matter of Soriano*, 19 I&N Dec. 764,766 (BIA 1988), we will review the materials.

Also, counsel asserts that the Petitioner's meeting with the U.S. researcher shows that her expertise and research "will elevate and accelerate development and implementation" of an autonomous mechanical system on which the researcher's laboratory is purportedly working. But counsel's assertion does not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citation omitted). The record lacks sufficient proof of the project, the researcher's intended use of the Petitioner or her research on the project, or the project's potential prospective impact. For this additional reason, the appellate evidence does not demonstrate the national importance of the Petitioner's proposed U.S. research.²

III. CONCLUSION

The Petitioner has not demonstrated the national importance of her proposed U.S. work and thus that the requested waiver is in the national interest. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.

² The Petitioner's inability to establish the national importance of her proposed U.S. work resolves this appeal. Thus, we need not consider her additional, appellate evidence regarding the purported U.S. benefits of a waiver grant. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.") (citation omitted). We will therefore reserve consideration of that issue.