



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

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

In Re: 25674629

Date: APR. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician-researcher in the field of urologic oncology, 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, by a preponderance of the evidence, the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Petitioner submits additional evidence and a brief asserting that he is eligible for a national interest waiver. 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 sustain 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. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

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 Director concluded 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 employed as a resident physician in the Department of Urology at [] University and anticipated continuing his work through a fellowship program; ultimately, he began a urologic oncology fellowship at []. The Petitioner initially stated that, upon completing his urological specialty training program at [] he intended to continue to make advances in his scientific endeavor of conducting observational and interventional studies and data analyses addressing diseases of significant human morbidity and mortality. Specifically, the Petitioner intends to conduct clinical trials to develop surgical approaches to enhance delivery of care for cancer patients.

For the reasons discussed below, we conclude the Petitioner has established eligibility for the national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889.

As evidence of his proposed endeavor's substantial merit and national importance, the Petitioner stated that he will continue to provide clinical care as a physician to cancer patients and to conduct research and lead clinical trials; he endeavors to impact the costliness of healthcare provision and to "create and develop innovative surgical approaches...to enhance delivery of care for patients suffering from cancer." The Petitioner submitted information from the American Cancer Society and the National Cancer Institute discussing urologic cancers and the economic burdens of patients receiving cancer care, as well as letters of endorsement from experts in the field discussing the implications of his research on patient treatment and recovery. Additionally, the Petitioner asserted that his citation record, publications in scientific journals, and presentations at conferences further demonstrated that his proposed research has broader implications for the field through dissemination of the results of that research. The Director determined that the Petitioner's endeavor has substantial merit and is of national importance. Upon review of the record, we conclude that the Petitioner has established that he 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 individual. To determine whether they are 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. The Director determined that, after consideration of these factors, the evidence submitted did not support the Petitioner's statements. Upon review, we conclude that the evidence of record establishes that the Petitioner is well positioned to advance his proposed endeavor.

The record includes the Petitioner's curriculum vitae, academic records,² published articles, peer review activity, and articles that cite to his research findings. The record also includes letters of endorsement from experts in the field in senior positions at the University of [redacted] Health Sciences Center, the University of [redacted] Medical School, [redacted] University School of Medicine, [redacted] University School of Medicine, [redacted] General Hospital, [redacted] University School of Medicine, the [redacted] and the [redacted] these letters provide detailed descriptions of the Petitioner's research accomplishments, including his development of surgical techniques that significantly impact patient recovery and have been utilized by medical centers in the United States and abroad. These letters also attest to the importance of the publication of the Petitioner's research in journals like the *British Medical Journal (BMJ) Case Report* and *Urology*, as well as the significance of his authorship of a chapter in a publication by the American Urological Association (AUA) that is relied upon by specialists nationwide for the delivery of optimal patient care. The letters also confirm the Petitioner's authorship of a test issued by the AUA that is required of practicing urologists to obtain Continuing Medical Education (CME) credits in order to maintain their licenses. They also emphasize the relevance of the presentation of the Petitioner's research at multiple seminars, the inclusion of three of the Petitioner's research projects at the AUA's annual conference, and the widespread use of his study on over-the-counter supplements as a guide to educate patients and to safeguard the public from complications associated with certain products. The Petitioner's record of success leading research projects and developing surgical methods in his STEM field position him well to advance his proposed endeavor. Accordingly, the Petitioner has demonstrated that he satisfies the second prong of the *Dhanasar* framework.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a 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.³ In performing

² The Petitioner received a Doctor of Medicine from the [redacted] University School of Medicine in 2017. For purposes of assessment under the second prong, USCIS considers an advanced degree in the fields of science, technology, engineering, and mathematics (STEM)—tied to the proposed endeavor and related to work furthering a STEM area important to U.S. competitiveness or national security—an especially positive factor to be considered along with other evidence. See 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>.

³ When evaluating the third prong and whether the United States may benefit from the individual's entry, regardless of whether other U.S. workers are available, USCIS considers the following combination of facts contained in the record to be a strong positive factor: possession of an advanced STEM degree, engagement in work furthering a STEM area important to U.S. competitiveness, and that the individual is well positioned to advance the proposed STEM endeavor of national importance. See *USCIS Policy Manual*, *supra*, at F.5(D)(2).

this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91. The Director determined that the Petitioner had not satisfied the third prong of the *Dhanasar* framework. Upon review, we conclude that the waiver of the labor certification requirement for the Petitioner would, on balance, be beneficial to the United States.

The evidence demonstrates that, as a research physician with a record of published influential research ventures who has developed surgical techniques and treatment methods adopted by others, the Petitioner possesses experience and expertise in his STEM field. The evidence also demonstrates the widespread economic and public health benefits associated with research progress in improving treatment methods for cancer and other urologic disorders. In addition, letters from experts in the field, including one from a distinguished fellow at the Centers for Disease Control and Prevention (CDC), provide a reasoned analysis of why the labor certification process is not well suited for discovering highly skilled scientists and researchers. Based on the Petitioner's history of successful research and the significance of his proposed work to advance U.S. scientific and public health interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. The Petitioner, therefore, meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.