



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

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

In Re: 28049346

Date: AUG. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the field of veterinary medicine, 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 the Petitioner was eligible for, and merited as a matter of discretion, a national interest waiver. 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 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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 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 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.

## II. ANALYSIS

The Petitioner is a researcher in the field of veterinary medicine, with a focus on infectious diseases and antibiotic resistance. He earned a PhD. in veterinary medical science from [redacted] University in 2016, and at the time of filing he was employed as a graduate research assistant at the University of [redacted]<sup>2</sup>. The Director concluded that he is eligible as a member of the professions holding an advanced degree. Therefore, the sole issue on appeal is whether he is eligible for, and merits as a matter of discretion, a national interest waiver.

### 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.

The Petitioner proposes to continue his research in infectious diseases in animals and antibiotic resistance at the University [redacted]. In his decision, the Director concluded that the Petitioner's proposed endeavor was of substantial merit and national importance. Based on our review of the record, we agree. As we noted in *Dhanasar*, endeavors related to research, pure science, and the furtherance of human knowledge may be of substantial merit without any economic benefits. *Id.* In addition, many proposed endeavors aiming to advance STEM technologies and research are of substantial merit. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual). Here, the proposed endeavor's substantial benefits to science and animal and human health have been demonstrated through several expert letters and government reports.

Turning to the national importance of his proposed endeavor, the Petitioner submitted evidence from the Centers for Disease Control and Prevention (CDC) regarding the interconnectedness of the threat from antibiotic resistance in humans, animals, and the environment, as well as a White House report on a national action plan to combat antibiotic-resistant bacteria. In addition, he submitted evidence of his research on the use of antibiotics in food animals such as cattle which could result in additional antimicrobial resistance in bacteria that could be transferred to humans. This was further supported by letters written by experts in the Petitioner's field, including [redacted] of the University

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<sup>1</sup> *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).

<sup>2</sup> We note that in response to the Director's request for evidence (RFE) he submitted evidence that he had accepted an offer as a post-doctoral research associate with the same institution.

[redacted] who was his Ph.D. and postdoctoral advisor. We agree that this evidence shows the national importance of his proposed endeavor.

#### 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 the Petitioner did not establish that he is well positioned to advance his proposed endeavor, but as the Petitioner asserts on appeal, he did not provide a sufficient analysis which explains the specific reasons for this conclusion. 8 C.F.R. § 103.3(a)(1)(i). Our review of the record shows by a preponderance of the evidence that the Petitioner is well positioned to advance his proposed endeavor.

As previously noted, the Petitioner earned a Ph.D. in veterinary medical science in 2016, a STEM field directly related to his proposed endeavor, and since that time he has worked as a researcher and instructor in this field, gaining advanced skills and knowledge. The results of this research have appeared in more than 40 conference presentations and journal articles authored by the Petitioner, which have been cited by other researchers in their own published work hundreds of times, demonstrating his record of success in advancing his proposed endeavor. [redacted] states in his letter that the Petitioner's development of a novel algorithm for early detection of inflammation in cows helps to reduce the routine administration of antibiotics, thus helping to reduce the dissemination of antibiotic-resistant bacteria to the environment and humans. In addition, the Petitioner has presented a plan for continuing his research in the areas of antimicrobial resistance, microbial-host interactions in large animals, and the use of advanced modeling techniques for the tracking of infectious diseases among food animals. Considering the totality of this evidence and its support of the nonexclusive second prong factors provided in *Dhanasar*, we conclude that the Petitioner is well positioned to advance his proposed endeavor.

#### 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. In performing 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.

As with the second prong, despite listing the factors to be considered under the third prong of the *Dhanasar* framework, the Director did not provide any analysis of the Petitioner's statements or evidence submitted in support of the benefits of waiving the labor certification process in his case. On appeal, the Petitioner again refers to his STEM degrees in veterinary animal science and his proposed endeavor in this area, as well his established positioning to advance his proposed endeavor. He also points out a letter from the chief of a laboratory of the [REDACTED] [REDACTED] where he has conducted research, noting the impact of his research on prevention of infectious diseases in sheep and cattle to the state's agricultural industry. In addition to these considerations, we note the national importance in preventing the spread of antibacterial resistance, the Petitioner's record of success in his previous research projects, and the interest of other researchers and government agencies in his work. We therefore conclude that the benefits to be provided by his proposed endeavor, even if other U.S. workers are available, outweigh the benefits inherent in the labor certification process, and are therefore sufficient to justify a waiver of the EB-2 classification's job offer requirement.

### III. CONCLUSION

The Petitioner has established his eligibility for a national interest waiver under the *Dhanasar* analytical framework, and we conclude that the waiver is warranted as a matter of discretion.

**ORDER:** The appeal is sustained.