



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

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

In Re: 22642882

Date: MAR. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer researching the mechanics of biopolymer-based materials and investigating the mechanics of plant cell walls, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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 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 they had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for a national interest waiver, a petition 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen’s proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen’s qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, in light of the nature of the noncitizen’s qualification or the proposed endeavor, it would be impractical either for the noncitizen 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 noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner earned a Ph.D. in engineering science and mechanics from the [REDACTED] University. The sole 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.

As stated above, once the Petitioner has established their categorical eligibility for the EB-2 immigrant category based on having earned an advanced degree or establishing that they are a noncitizen of exceptional ability, the Director will evaluate the national interest in waiving the requirement of a job offer and thus a labor certification under the three prongs of the analytical framework we first discussed in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

We conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The Director does not appear to have addressed or analyzed whether the Petitioner's proposed endeavor is of substantial merit and national importance. Our exercise of discretion to waive the requirement of a job offer, and therefore a labor certification, requires adherence to all three of the *Dhanasar* framework's prongs.

In *Dhanasar* we focused the first prong of our analysis on the potential impact of a Petitioner's specific proposed endeavor to consider its substantial merit and national importance. The substantial merit of an endeavor can be shown in any number of areas such as business, entrepreneurialism, science, technology, culture, health, education, arts, or the social sciences. The furtherance of human knowledge, potential economic impact on, and economic benefits for the United States can also be evaluated to determine the substantial merit of a proposed endeavor.

At the time of filing, the Petitioner stated on their ETA 750 Part B that they were a postdoctoral scholar at the [REDACTED] University conducting research in mechanical engineering focusing on mechanics of biopolymer-based materials and investigating the mechanics of the plant cell wall. The Petitioner intends to continue this research at the [REDACTED] University indefinitely, contingent on the lab's continued receipt of research funding. The Petitioner attested that their proposed research endeavor's focus on the mechanical behaviors and properties of soft materials is of substantial merit and has national importance due to the potential broader implications to advance development of advanced technologies such as bio-inspired multifunctional materials and drug-delivery strategies for disease therapy.

Dhanasar also requires us to consider the potential prospective impact of the proposed endeavor to determine its national importance. The national importance of an endeavor is rooted in its potential impact and whether it has national or global implications within the field of endeavor. The broader implications, national and/or international, can inform us of the proposed endeavor's national importance. That is not to say that the implications are viewed solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit. The Director may want to consider the broader implications of the Petitioner's soft materials research for the development of advanced technologies such as bio-inspired materials and drug delivery systems. They may evaluate whether the benefits identified by the writers of recommendation letters present in the record highlight any broader implications that make medical advances in the delivery of drugs such as chemotherapy for cancer patients or promise substantial economic effects on plastic as a segment of municipal solid waste. For example, the Director may review the letter of [REDACTED] the Petitioner's advisor at [REDACTED] School of Engineering during their post-doctoral fellowship, to determine whether the understanding of bacterial biofilms' adhesion has broad implications on biomaterial innovation such that it rises to the level of national importance. And [REDACTED] assistant professor in the Department of Mechanical Engineering at the University [REDACTED] states that he has cited the Petitioner's work working with nanoparticles undergoing endocytosis. Endocytosis is the action of taking in matter by a living cell. Nanoparticles are any ultrafine particle of matter. The Director may want to examine how, as

stated by [] the unique characteristics of nanoparticles broadly implicate national importance because of their value for new drug delivery options in cancer patients.

Critical and emerging STEM technologies, as identified in governmental, academic, and other authoritative and instructive sources can be potential fields of substantial merit with broader implications rising to national importance. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>. Factors that the Director can evaluate to determine the Petitioner's proposed endeavor's substantial merit may include the potential for the endeavor to create a significant economic impact in development of advance technologies such as bio-inspired materials and drug delivery therapies, its furtherance of human knowledge in the mechanics of soft materials, and its potential to create a significant cultural impact.

Accordingly, we hereby withdraw the Director's decision and remand the matter so that the Director may conduct a first-line analysis of the proposed endeavor's substantial merit and national importance.

B. Well Positioned to Advance the Proposed Endeavor

Our analysis now turns to the Petitioner's eligibility under the second prong. As stated above, the second prong shifts the focus from a petitioner's proposed endeavor to the petitioner or individual themselves and how well positioned they are to advance their proposed endeavor.

We disagree with the Director's phraseology relating to a demonstration that the Petitioner's research work "transcend in the field of endeavor" to establish eligibility under the second prong of *Dhanasar*. Our analysis of *Dhanasar*'s second prong is multi-factorial. "Transcendence" is not contained in the statute, is not defined in the regulations, nor is it in the *Dhanasar* analytical framework. Accordingly, we withdraw the Director's decision as to the second prong of *Dhanasar* with instructions to consider the following factors and any other relevant factors in evaluating whether the Petitioner is well positioned to advance their proposed endeavor:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

On remand, the Director should conduct an individualized consideration of the multifactorial analysis under *Dhanasar*'s second prong to determine how well positioned the Petitioner is to advance their proposed endeavor. The Petitioner identifies their Ph.D. in engineering science and mathematics as one in a science, technology, engineering, or mathematics (STEM) field. The Director should consider the Petitioner's attainment of a Ph.D. from the [] University in the STEM field of engineering science and mechanics to evaluate whether it is an especially positive factor in consideration with the other factors for purposes of assessing whether the Petitioner is well-placed to advanced their proposed endeavor keeping in mind that a degree in and of itself is not a basis to determine that a person is well positioned to advance a proposed endeavor. *Id.*

As stated above, the Petitioner stated on their ETA 750 Part B that they were a postdoctoral scholar at the [] University conducting research in mechanical engineering focusing on mechanics of biopolymer-based materials and investigating the mechanics of the plant cell wall and that they intended to continue this research at the [] University indefinitely in the future contingent on continued research funding. The Director should consider whether the Petitioner's proposed indefinite position contingent on the lab's receipt of funding situates them well to advance their proposed endeavor.

The testimony of the writers regarding the interest in the Petitioner's work in combination with other objective evidence of government, industry or other interest in the work might show that the Petitioner is well positioned to advance their proposed endeavor. As stated above [] highlighted the Petitioner's work with amyloids and bacterial biofilm matrices which leads to the development of bio-inspired materials. [] discussed the Petitioner's work with nanoparticles of unknown origin undergoing endocytosis as an addition to the knowledge for drug delivery systems. In their RFE response, the Petitioner submitted two additional letters. The letter of [] professor in the Department of Engineering Mechanics at [] University, discussed the writer's direct reference of the Petitioner's investigation on the mechanics of red blood cells and how they are a critical step in the development of new therapies for sickle-cell anemia. The letter of [] professor for theoretical biophysics at [] University also described in detail the Petitioner's work with red and white blood cells how this identifies new targets for antimalarial therapies. The Director should consider the testimony from the writers of letters of recommendation in the record to see if they tend to show the Petitioner's progress towards achieving their proposed endeavor such that they have developed a record of success and are well-positioned to advance it.

The Director can evaluate the progress of the Petitioner's proposed endeavor by evaluating evidence of funding the Petitioner has received or whether they have demonstrated that they have a leading, critical, or indispensable role in their endeavor. Evidence such as grant or funding awards with details of the amount and terms of the grant or funding aware are examples that can show progress as well as interest. Acknowledgments for funding included by the Petitioner's co-authors in their joint publications do not provide the details of the amount and terms of the grant or if Petitioner is the named grantee or awardee.

The Director can also weigh and consider the evidence the Petitioner submitted of their peer review activity to determine whether it is significant to demonstrate the Petitioner's record of success in their field or is otherwise well positioned to advance their proposed endeavor.

The Petitioner heavily emphasized their publication and citation history. The Petitioner's record of publication and citation history can be objective documentary evidence a petitioner's positioning for advancement of their proposed endeavor in conjunction with letters of recommendation. The Director may want to evaluate the total number of citations as well as identifying how many were self-citations by the Petitioner and co-authors. The Director could also analyze the Petitioner's submitted data from Clarivate Analytics to determine if it can serve as an objective rubric to determine the weight and sufficiency of the Petitioner's publication and citation history. It is important to note that while we listed "publication and other published materials that cite his work" as a point of consideration in *Dhanasar*, our ultimate determination that Dr. Dhanasar was well positioned under the second prong was not based on his citation record alone; rather, we found his "education, expertise, and experience

in his field, the significance of his roles in research projects, as well as sustained interest of and funding from government entities such as NASA and AFRL” as relevant, probative and material proof of being well positioned to advance the proposed endeavor.

So we withdraw the Director’s decision and remand the matter with instructions to enter a new opinion consistent with the *Dhanasar* analytical framework described here.

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

If the Director finds that the Petitioner meets the eligibility requirements contained in the first and second prongs of the *Dhanasar* framework they should move to evaluating whether, on balance, the Petitioner demonstrates that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

When evaluating the third prong and if present in the record, USCIS can consider the following combination of facts to be a strong positive factor in favor of waiving the requirement of a job offer and thus a labor certification:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

The Director can consider the impracticality of a labor certification, the benefit to the U.S. of a petitioner’s contributions, the urgency of a petitioner’s contributions to the national interest, the capacity for job creation, and any adverse effects on U.S. workers when conducting the balancing of the national interests of waiving the requirements of a job offer and therefore a labor certification.

III. CONCLUSION

For the foregoing reasons, the matter will be remanded to the Director to determine whether the Petitioner has established: (1) the national importance of the Petitioner’s proposed endeavor as required by the first prong of the *Dhanasar* precedent decision; (2) that the Petitioner is well positioned to advance the proposed endeavor under the second prong and; (3) on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification for the Petitioner. The Director may request any additional evidence considered pertinent to rendering a decision under the foregoing analysis, and we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.