



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

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

In Re: 22678957

Date: MAY 05, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the area of quantum optics, 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 record did not establish that the Petitioner merited a national interest waiver of the job offer requirement. On appeal, the Petitioner asserts that the Director did not follow the adjudication framework for the adjudication of national interest waivers set forth in *Matter of Dhanasar*, 26 I&N Dec. 884.

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. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 who concentrates in the area of quantum optics. The Director determined that the Petitioner’s Doctor of Philosophy degree in physics and mathematics from [REDACTED] Institute of Physics and Technology, issued on January 16, 2004, established that he qualifies as a member of the professions holding an advanced degree, and we agree. Therefore, the sole issue on appeal is whether the Petitioner merits a national interest waiver of this classification’s job offer requirement.

At the time the petition was filed, the Petitioner was employed as an Assistant Professor in the Department of Physics and Astronomy at [REDACTED] University, a position he had held since June 2015. The record indicates that this was a research position, focusing on quantum information processing and quantum sensing, although he was also responsible for teaching several courses. He proposes to continue to conduct research in this area.

### A. Substantial Merit and National Importance of the Proposed Endeavor

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 notes that the Director did not address the substantial merit of his endeavor in the decision, and in his appeal brief points to evidence supporting the benefits of his research in the areas of quantum simulation and the development of a thermometry method for the measurement of cellular temperature. He also refers to the USCIS Policy Manual, which indicates that many proposed endeavors which aim to advance STEM technologies and research “have substantial merit in relation to U.S. science and technology interests.”<sup>2</sup> As the Petitioner has demonstrated that his proposed research in a STEM field has substantial merit in the areas of science and health, we will next determine whether it is of national importance.

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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> See generally 6 USCIS Policy Manual F.5(D)(2)

The relevant question in determining whether an endeavor is of national importance is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.*

In his decision, the Director concluded that the Petitioner's proposed endeavor was not of national importance. Specifically, he noted the Petitioner's ongoing collaboration with the R-Q-C- and the P-N-L-P-I-, institutions in Russia where he conducted research prior to his employment at [REDACTED] and concluded that the record did not show that the Petitioner would be able to share the results of his research done in collaboration with these institutions with the medical industry in the U.S. On appeal, the Petitioner first asserts that his affiliations should only be considered under the second prong, where the focus of the analysis shifts from the proposed endeavor to the individual proposing the endeavor. However, because the working environment in which a proposed endeavor is to be conducted may effect the extent of its potential impact, this is a relevant consideration under both the first and second prongs of the *Dhanasar* analytical framework.

The Petitioner also asserts in support of the national importance of his endeavor that it is common for researchers to have multiple institutional affiliations, and he provides evidence in support of this assertion. More importantly, he points out that he has published his research in peer-reviewed scientific journals that are widely available to U.S. industry as well as academia, and that he will continue to do so. We agree that the record does not show that the Petitioner's ongoing affiliations with foreign institutions will restrict the potential national importance of his research in the field of quantum physics.

In support of the national importance of his proposed endeavor, the Petitioner refers to the [REDACTED] 2021 report by a subcommittee of the National Science & Technology Council (NSCT) titled [REDACTED] [REDACTED] as well as an excerpt from another document from the NSCT titled [REDACTED]

Both highlight the economic and national security benefits of continued research in quantum information science (QIS), which includes research in photonics, the global positioning system (GPS), and magnetic resonance imaging, areas in which the record shows the Petitioner has focused his work. In addition, the Petitioner notes that the USCIS Policy Manual section on STEM technologies and research in relation to petitions for national interest waivers indicates that many such endeavors will have "sufficiently broad implications to demonstrate national importance."<sup>3</sup> Because the Petitioner has established that his proposed endeavor in quantum physics research is in an area that has been repeatedly identified by U.S. government entities as critical to national economic and security interests, and that the results will be publicly disseminated, we disagree with the Director and conclude that it is in the national interest. Accordingly, having shown both the substantial merit and national importance of his proposed endeavor, the Petitioner has established that he meets the first prong of the *Dhanasar* framework.

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<sup>3</sup> See generally 6 USCIS Policy Manual F.5(D)(2)

## B. Well Positioned to Advance the Proposed Endeavor

In the second prong of the *Dhanasar* framework, we shift our focus from the proposed endeavor to the petitioner. To determine whether they are 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. *Id.* at 890.

Here the Director determined that the evidence regarding the number of citations to the Petitioner's published work, his work as a peer reviewer for several journals in his field, and his patent did not sufficiently show a record of success in his field. We disagree with the Director and conclude that based upon several of the factors listed above, the Petitioner has shown that he is well positioned to advance his proposed endeavor.

We initially note that the Director's decision is based in part on factual errors in his analysis of the record. For instance, the Director acknowledges the evidence of the Petitioner's published research during his time at [REDACTED] University, but states that this was done during "his graduate studies." However, the record shows that the Petitioner completed his graduate studies at the [REDACTED] Institute of Physics and Technology in 2003, and served as an assistant professor at [REDACTED] beginning in 2015. In addition, the Director determined that the Petitioner's work had been cited 322 times since 2014 as opposed to the more than 1700 citations in this period reflected by his Google Scholar profile, but this conclusion appears to have been based upon a calculation error.<sup>4</sup> Both of these errors led the Director to minimize the Petitioner's record of success in his previous research work related to his proposed endeavor.

Beyond the Petitioner's strong educational background and years of experience as a researcher in the field of quantum physics, the evidence of his dozens of published papers and conference presentations and the positive attention they have garnered establish his long record of success in his field of endeavor. This includes evidence that several of his papers have been heavily cited by other researchers, including a 2007 paper published in *Nature* which had been cited nearly 1400 times at the time of filing. As noted by Professor M-D-L- of H-U-, the approach developed by the Petitioner in this paper "has been employed for many projects dealing with realization of quantum devices," some of which are referenced in Professor L-'s letter. Another example of the Petitioner's record of success was his 2018 article published in *ACS Photonics*, which Professor I-A- noted in his letter "resulted in one of the best all-optical, biocompatible, high-resolution thermometry techniques the field had seen at the time our research was being conducted." The professor goes on to state in his letter that this work, which the record indicates was also relatively highly-cited, formed the basis of his own research group's 2019 paper in *Science Advances*.

In addition, to his education, skills, experience and record of success, the Petitioner also demonstrated the interest of others in his work. Specifically, he submitted evidence that as a principle investigator,

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<sup>4</sup> The Director appears to have arrived at this figure by counting citations to the Petitioner's papers published in 2014 and up to approximately the date of filing, whereas the Google Scholar figure counts the number of citations to all of the Petitioner's published work (including those papers published prior to 2014) in the years from 2014 to approximately the date of filing.

his research was funded by the National Science Foundation in three grants in consecutive years totaling more than \$1 million. Further, while the Director noted that the Petitioner did not submit evidence that his patent had been successfully commercialized or otherwise drawn interest from potential investors or customers, it does indicate progress towards achieving the proposed endeavor.

Based on the factors analyzed above, we disagree with the Director and find that the Petitioner has established that he is well positioned to advance his proposed endeavor.

### C. Whether on Balance it Would be in the National Interest to Grant a Waiver

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.

On appeal, the Petitioner asserts that given the evidence of the high priority placed by the U.S. government in advancing research in QIS as a critical technology, his work should be considered sufficiently urgent to warrant foregoing the labor certification process. While there is no doubt as to the high priority placed in QIS research, this does not lead to the conclusion that there is an urgent need for the Petitioner's services in his proposed endeavor. However, the materials submitted by the Petitioner showing the strong national interest in furthering QIS research and his specific endeavor, together with the evidence of his background, skills, and ability to advance this research and the strong interest in it by others, demonstrate that the United States would benefit from his contributions despite the presence of qualified U.S. workers. Therefore, the record shows that it would be in the national interest to grant the Petitioner a waiver of the job offer requirement for the requested classification.

### III. CONCLUSION

The Petitioner has shown his eligibility as a member of the professions holding an advanced degree, and thus for the EB-2 classification. In addition, he has established that his proposed endeavor is of substantial merit and national importance, and that he is well positioned to advance that proposed endeavor. We therefore conclude that the national interest in granting him a waiver of the job offer requirement exceeds that inherent in protection of the U.S. domestic labor force, and grant him the waiver. The petition is approved.

**ORDER:** The appeal is sustained.