



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

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

In Re: 26158692

Date: MAY 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a doctoral student and research assistant, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner was eligible for, or 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 dismiss the appeal.

I. LAW

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 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 determined that the Petitioner was eligible for the underlying EB-2 classification as a member of the professions holding an advanced degree. As the record includes a copy of the Petitioner's diploma and transcripts from [REDACTED] University which show that he earned a Master of Science degree in business research in May 2021, we agree. Therefore the sole issue on appeal is whether he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

As a doctoral student and research assistant, the Petitioner currently conducts research in the area of organizational behavior at the University [REDACTED]. He proposes to continue his research by using big data obtained from public datasets to replicate and validate lab-based research for improved organizational behavior applications. The Petitioner indicates that this includes research projects across a broad range of subjects, including:

- The role of gender in online encyclopedia editing;
- The effect of light cannabis use on work productivity;
- The work behaviors of immigrants in the United States; and,
- Guidelines for management in health care settings

After review of the record under the *Dhanasar* analytical framework, we disagree with and withdraw the Director's conclusions regarding the first prong, but agree with his conclusion that the Petitioner does not meet the second prong of the framework and does not merit a waiver of the job offer requirement as a matter of discretion.

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.

In his decision, the Director concluded that the Petitioner's proposed endeavor was of substantial merit, but did not provide an analysis. Our precedent decision in *Dhanasar* noted that an endeavor's substantial merit may be established without evidence of economic impact, providing the examples of endeavors relating to research, pure science, and the furtherance of human knowledge. *Id.* Here, the Petitioner has proposed to conduct research in the area of business and social science, pursuing topics including the effect of cannabis on work behaviors and the work behaviors of immigrants in the United States. This evidence establishes the substantial merit of the Petitioner's proposed endeavor.

Next, the Director concluded that the Petitioner's proposed endeavor was not of national importance. However, as with his conclusion regarding substantial merit, he provided no analysis of the record to explain this decision, but simply repeated the Petitioner's description of his proposed endeavor.

In evaluating the prospective impact of a proposed endeavor, we look for its broader implications within a particular field. *Id.* Here, the Petitioner indicates that he intends to continue his research as described above, which he states has a wide range of applications and will result, for example, in his development of management guidelines for businesses and a predictive tool to analyze the behavior of workers. In addition, he submits a research article published in a professional journal which confirms the growing use of algorithmic evaluation by companies to analyze the behavior of their workers. He also states that he expects to publish the results of this research. As the Petitioner has shown that his proposed endeavor has the potential to impact the field of organizational behavior and will be widely available through the dissemination of his research results, we disagree with the Director and conclude that it is of national importance.

The Petitioner has established the substantial merit and national importance of his proposed endeavor, and therefore 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 concluded that the Petitioner had not established that he is well-positioned to advance his proposed endeavor, basing his conclusion on his review of the Petitioner's education, publication and citation history, reference letters, and progress both in his career and towards his proposed endeavor. On appeal, the Petitioner asserts that the Director did not sufficiently consider evidence submitted in response to the RFE, and compares his research and funding status to that of the petitioner in *Dhanasar*. He also argues that the Director imposed a higher standard than provided for in the regulations and precedent decision concerning the EB-2 classification and national interest waiver.

Specifically, the Petitioner had previously singled out language in the Director's RFE (which also appear in his decision) stating that the reference letters did not establish his "substantial influence in the field" and that specific citations to his work by other researchers did not show that his work was "singled out as significant in the field." Although the Petitioner notes that this language does not appear in the second prong factors provided in *Dhanasar*, here the Director is applying the standard reflected in footnote 3 of that decision, which states in part that an "individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise." The Director did not impose a higher standard than that laid out in the *Dhanasar* decision or in the pertinent regulations.

Turning to the first of the second prong factors listed in *Dhanasar*, the Petitioner earned a master's degree in business research shortly before the filing of his petition, and is currently pursuing a doctoral

degree. While this is sufficient to show his eligibility for the underlying immigrant classification, the Petitioner has not demonstrated that this level of education puts him into a strong position to advance his proposed endeavor. Similarly, the Petitioner's brief history of publishing the results of his research, including contributions to three journal articles and one book chapter, does not show a record of success relating to his proposed endeavor.

The Petitioner argued in his RFE response that both the prestige of the journals in which his work has been published and the number of citations to that work by other researchers shows that he is well-positioned to advance his endeavor. Included in the record is information about the impact factor of each of the three journals in which the Petitioner has published, as well as rankings of two of those journals, *BMJ* and *Proceedings of the National Academy of Sciences (PNAS)* in comparison to others in a particular field. While we acknowledge that the prestige of a journal may be one factor contributing to a showing of an individual researcher's record of success, we will not assume that every paper published in a high-ranking journal is indicative of a record of success. In addition, the Petitioner's relatively small number of published papers counters the positive consideration of his record due to the prestige of the journals in which he has published.

Regarding the number of citations to the Petitioner's published work, he submitted reports from Clarivate Analytics showing baseline citations and percentile rankings by number of citations for several fields. We note that he highlighted the figures for the field of "Economics & Business" for comparison to citations to his work, but in two of his three papers he conducted big data analysis in support of research in other fields. It is therefore not clear that the highlighted figures present an accurate picture of the success of these papers. In addition, since all of his papers were published within approximately two years of the filing of his petition, the relatively low number of citations across the board renders a comparison by percentile rankings almost meaningless. For example, the Petitioner's 2020 paper published in *PNAS* had been cited to on 14 occasions at the time of filing, which according to this evidence would place it in the top 1% of papers in the field of economics and business. However, papers which were cited only once (and only 13 times less than the Petitioner's paper) would still be in the top 50% of papers by this measure. This evidence thus does not show that the Petitioner's publication and citation history reflect a record of success in his field, or that relevant individuals, such as other researchers and experts in his field, have shown interest in his proposed endeavor.

In his appeal brief, the Petitioner also criticizes the Director's consideration of his student status and lack of research funding as factors weighing against his progress towards achieving his proposed endeavor. While we agree that these are not among the second prong factors enumerated in *Dhanasar*, since those factors are intentionally broad and not focused on a particular type of endeavor, they were favorable considerations leading to our conclusion that the petitioner in that case, also a researcher, was well positioned to advance his proposed endeavor. We also note that the second prong factors presented in *Dhanasar* are not exhaustive. Therefore the Director did not err in considering these aspects of the Petitioner's standing in his second prong analysis.

As the Petitioner has not established that his education and record of success, or the interest of other experts in his research, are such that he is well positioned to advance his proposed endeavor, we agree with the Director and conclude that he does not meet 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. On appeal, the Petitioner again asserts that the Director ignored evidence in the record and imposed an incorrect standard in his decision. He also argues that a labor certification would be impractical due to the temporary nature of his current position, and that the United States would benefit from his contributions despite the presence of other qualified workers. However, as he has not established that he meets the second prong of the *Dhanasar* framework, the Petitioner has not shown that he is eligible for and otherwise merits a national interest waiver, and we reserve this issue.²

III. CONCLUSION

The Petitioner is eligible for the underlying EB-2 classification as a member of the professions holding an advanced degree, but he has not shown that he is eligible for and otherwise merits a national interest waiver of that classification's job offer requirement.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).