



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

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

In Re: 20481958

Date: MAR. 18, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a cancer biology researcher, 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While 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 after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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 that the foreign national 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 foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national 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 foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. 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.

At the time of filing, the Petitioner was working as a postdoctoral research fellow in the Department of Cancer Biology at [REDACTED]. With regard to the Petitioner's research duties, the record includes a September 2019 letter from [REDACTED] professor of cancer biology at [REDACTED] [REDACTED] indicating that the Petitioner "is responsible for studying the role of [REDACTED] in the development of [REDACTED] cancer, a major and deadly form of lung cancer. Her responsibilities include developing hypotheses and experimental plans to address research aims, maintaining record notebooks, and publishing high impact, original research papers."³

In response to the Director's request for evidence, the Petitioner submitted a February 2021 letter from [REDACTED] an assistant professor and a senior associate consultant at [REDACTED] stating:

As a research fellow, [the Petitioner] will continue to investigate the role of [REDACTED] in [REDACTED] cancer transformation. She will focus her studies on [REDACTED] and their role in lung cancer. [The Petitioner] is also planning to expand her research on [REDACTED] to explore their role in other squamous cancers with notable [REDACTED] such as head, neck, and pancreatic cancers. Her focus in these studies will be on the interaction between the [REDACTED] and their role in the [REDACTED] of various cancer types.

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

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that she intends to continue her "research in the development of [REDACTED] to improve targeted therapies for [REDACTED] tumors. I plan to continue my research on identifying relevant [REDACTED] to predict and enhance therapeutic response of different drugs in [REDACTED]. She further stated: "I would also like to improve [REDACTED] to identify robust, [REDACTED] that will aid in improving personalized medicine and patient care." In addition, the Petitioner identified three research projects she planned to undertake, entitled "[REDACTED]"

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

[REDACTED] “ [REDACTED]
[REDACTED] ” and “ [REDACTED]
[REDACTED] ”.

As evidence that her proposed research has substantial merit and national importance, the Petitioner provided letters of support discussing how her undertaking stands to advance treatment methods for various forms of cancer. She also presented information about the incidence of cancer in the United States and the disease’s impact on U.S. public health. Additionally, the Petitioner has submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has demonstrated both the substantial merit and national importance of her proposed research, she has established that she 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 Petitioner. The record includes her curriculum vitae, academic records, published articles, peer review activity, and documentation of numerous articles that cited to her research findings.⁴ In addition, the Petitioner offered reference letters describing her expertise in cancer biology research and her past record of success in that field. Several expert references identify specific examples of how the Petitioner’s research progress relating to the development of targeted cancer therapies has affected her field. As corroborating documentation regarding the significance of her work, the Petitioner provided citation evidence showing that her published work has been frequently cited by independent researchers, and that the rate at which her work has been cited is high relative to others in the field. Her experience and expertise as a cancer biologist, published articles, citation evidence, record of success contributing to various research projects, and progress in her field position her well to advance her proposed endeavor. Accordingly, the Petitioner has demonstrated that she satisfies the second prong of the *Dhanasar* framework.

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

As explained above, the third prong requires the 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.⁵ As a cancer biologist with a Ph.D., the Petitioner possesses considerable experience and expertise in her research field. The record also demonstrates the widespread public health benefits associated with research progress in improving treatment methods for cancer. In addition, the Petitioner

⁴ The Petitioner received a Ph.D. in Biology from [REDACTED] University in 2014. “USCIS considers an advanced degree, particularly a Doctor of Philosophy (Ph.D.), in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong.” See 6 *USCIS Policy Manual* F.5(D)(2), <https://www.uscis.gov/policy-manual>.

⁵ When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- 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.

See *USCIS Policy Manual*, *supra*, at F.5(D)(2).

has documented her past successes in advancing research relating to the development of targeted cancer therapies and publishing influential research findings. Based on the Petitioner's track record of successful research and the significance of her proposed work to advance U.S. public health interests, we conclude that she 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 she has established she is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.