



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

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

In Re: 23660123

Date: JAN. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer, 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. 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 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.

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

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. Next, a petitioner must then demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner shows:

- 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.

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).

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining 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 under the three-prong *Dhanasar* analytical framework. The record reflects that the Petitioner proposes to conduct research on ocean energy conversion devices in order to implement vortex-induced vibration for energy generation from ocean and river currents. The first prong relates to substantial merit and national importance of the specific, proposed endeavor. *Id.* at 889. The Director decided that the Petitioner's proposed endeavor met the substantial merit and national importance requirements.

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The Director determined that the Petitioner did not show that he is well positioned to advance his proposed research under the second prong.

The Director's decision acknowledged the submission of evidence, including educational credentials, recommendation letters, articles and conference papers, journals rankings, peer review activity, funding documentation, citatory information, and field reports and articles. In addition, the Director indicated that the Petitioner has a master's degree, is working towards his doctoral degree, and has experience conducting research in the field. Further, the Director determined that even though the Petitioner added to the general knowledge of the field through his research, the Petitioner did not demonstrate how his five publications and five conference presentations sufficiently positioned himself to advance his proposed endeavor.

Similarly, the Director discussed the Petitioner's peer review activity and found that such review work did not make him well positioned to advance his proposed endeavor. Moreover, the Director indicated the citation figures of the Petitioner's work by others, including citation percentiles. However, the Director determined that such citation data did not demonstrate the Petitioner's past record of success, did not reflect the authoritative nature of his research and published work, or did not otherwise show him to be well positioned to advance his proposed endeavor.

In addition, the Director addressed the Petitioner's claim of receiving funding for his past research. Specifically, the Director indicated that the evidence in the record did not indicate that the Petitioner's research had received funding and pointed out a reference letter indicating that the Petitioner was not named in funding documents, suggesting that "it was not his project that was funded or he did not play a significant initiating role in obtaining funding." Moreover, the Director concluded that assisting or being involved in a research project is not "the same as receiving funding or support for his own project." Further, the Director found "the evidence is insufficient to demonstrate that the petitioner has a similar determinative role in establishing or controlling the direction of the research, that he has received repeated funding as primary awardee, or is listed on the grants as sole researcher."

Finally, as it relates to progress towards achieving the proposed endeavor, the Director repeated that the record did not show the Petitioner's receipt of funding for his past research, nor the existence of grants, contracts, or agreements awarded to him for prior research or to continue his proposed

endeavor. In addition, the Director indicated that while the Petitioner's previous research has added to the general pool of knowledge, it did not sufficiently demonstrate his position to advance the proposed endeavor.

Although the Petitioner contests the Director's findings, a review of the record reflects that the Director sufficiently evaluated the evidence, and we agree with the Director's ultimate conclusions. Therefore, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner emphasizes that he "holds an advanced degree in a STEM [Science, Technology, Engineering, and Mathematics] field, mechanical engineering." USCIS considers an advanced degree, particularly a 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/policymanual>. However, a degree in and of itself is not a basis to determine that a person is well positioned to advance the proposed endeavor. *Id.* Although the Petitioner's master's degree in mechanical engineering is an especially positive factor, the totality of the evidence in the record, as discussed by the Director and indicated above, does not show that he is well positioned to advance his proposed endeavor.² Furthermore, in *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

In addition, the record contains several recommendation letters that generally discuss the Petitioner's research and reference the publication of the Petitioner's research in journals or the citation of his work by others, including a few letters who state they have cited to his research in their own papers. Again, the Petitioner did not demonstrate that his citatory evidence reflects a record of success in the field. Moreover, the letters do not indicate or explain how the Petitioner's work has been implemented, utilized, or applauded at a level that would well position him to advance his proposed endeavor. Further, while the record contains a letter from a professor at [redacted] University confirming the Petitioner's employment in the mechatronics lab in the department of mechanical and material engineering as a researcher in conjunction with him earning his Ph.D. in mechanical engineering and a letter from a professor at the [redacted] State University at [redacted] inviting the Petitioner to engage in research pending the availability of funds, the Petitioner did not establish how these temporary and contingent jobs well positions him to advance his proposed endeavor.

² While the Petitioner submits additional documentation, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The record demonstrates that the Petitioner has conducted and published research, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently established that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse. Nor does the evidence otherwise reflect that his work constitutes a record of success or progress in advancing his research.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. As such, analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³ Accordingly, the Petitioner has not shown eligibility for a national interest waiver.

ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).