



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

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

In Re: 27426002

Date: JUL. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a machine learning researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 the Petitioner had not established eligibility for 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 dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of 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 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

Regarding the national interest waiver, the Petitioner indicated his proposed endeavor involved building and designing accurate and algorithms in order to optimize system performance. The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that although the Petitioner satisfied the first prong, the Petitioner did not fulfill the remaining two prongs.

The second prong shifts the focus from the proposed endeavor to the Petitioner in order to determine whether the individual is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record contains his curriculum vitae, educational credentials, reference letters, journal articles and conference papers, citatory evidence, funding documentation, and peer review activity. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

The Petitioner possesses a doctor of philosophy in electrical and computer engineering from the University [REDACTED]² USCIS considers an advanced degree, particularly a Ph.D. in a Science, Technology, Engineering, and Mathematics (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 Ph.D. degree in engineering is an especially positive factor, the totality of the evidence in the record, as discussed below, does not show that he is well positioned to advance his proposed endeavor. 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.

The record contains recommendation letters referencing the Petitioner's graduate research. Overall, the letters provide descriptions of the Petitioner's various research projects; however, in further explaining the implementation or impact of his work, the letters generally point to other papers that cited to his research in their own written work. The letters do not further elaborate and sufficiently explain how the Petitioner's work has been utilized in the field or otherwise constitutes a record or success beyond having been cited by others in their published works. Moreover, the lack of specificity in the letters do not show how his work has affected the field or industry demonstrating a history of accomplishment, well positioning himself to advance his proposed endeavor. For instance, although [REDACTED] claimed the Petitioner's "development of the pseudo mirror descent algorithm has broad implications for improving and innovating all applications of machine learning," [REDACTED] did not additionally discuss the broad implications the Petitioner's algorithm has had in the field of machine learning.

² According to his curriculum vitae, the Petitioner also obtained a master of science from [REDACTED] University and a bachelor of engineering from [REDACTED] University (China); the Petitioner did not provide supporting evidence of these claims.

The record also includes samples of partial articles that cited to the Petitioner's co-authored work. Based on these excerpts, the authors reference the Petitioner's research as background material for their own findings, and these limited articles do not represent a level of his success in the field. The articles do not distinguish or highlight the Petitioner's work from the other cited papers.

Regarding his overall citation record, the Petitioner initially provided evidence from Google Scholar (GS) reflecting 130 citations from 12 articles, with his highest cited articles receiving 42, 39, and 22 citations, respectively. The Petitioner, however, did not specify how many citations were self-citations by him or his coauthors. Furthermore, the Petitioner submitted data from Clarivate Analytics (CA) regarding baseline citation rates and percentiles by year of publication for the computer science field. The Petitioner claimed his citations from articles published in 2014 ranked among the top 20% and citations from articles in 2015 and 2017 ranked in the top 10%. The Petitioner did not indicate whether he factored in any self-citations in determining these percentile rankings. Moreover, the documentation from CA states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

In response to the director's request for evidence, the Petitioner provided updated GS figures reflecting 164 total citations, with his highest cited articles receiving 48, 46, and 24 citations, respectively. In addition, he offered a list of highlighted articles claiming to represent independent citations. Further, he submitted data claiming to be derived from "OpenAlex" reflecting 97.38% for "Citation Percentile" and 97.46% for "Publication Percentile." Notwithstanding the evidence does not indicate the source as "OpenAlex," the Petitioner did not show how "OpenAlex" calculates the percentile figures.

Regardless, the Petitioner has not established that the number of citations received by his published articles and conference papers reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Further, while we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

The Petitioner also highlighted articles indicating that "[t]his work is supported in part by a U.S. National Science Foundation (NSF) Grant," "[t]his work was supported by MURI grant," and "[t]his work was supported by ONR grant." However, the record does not contain copies of the research grants showing the Petitioner as a named grant recipient. In *Dhanasar*, the record established the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show the Petitioner was mainly responsible for obtaining funding for the research projects.

As it relates to his peer review activity, the Petitioner provided documentation evidencing his review of manuscripts for journals and conferences. The Petitioner, however, did not explain the significance of his review experience or demonstrate his participation in the widespread peer review process

represents a record of success in his field or it is otherwise an indication that he is well positioned to advance his endeavor.

The record demonstrates the Petitioner has conducted and published research while pursuing his education, 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 demonstrated his published work has served as an impetus for progress in the field or it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show his work constitutes a record of success or progress in advancing his research.

III. CONCLUSION

As the record is insufficient to demonstrate the Petitioner is well positioned to advance his proposed research endeavor, he has not established 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).