



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

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

In Re: 26375372

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a cancer researcher, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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 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 the record did not reflect that they had 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. 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 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.

Whilst 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 USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen’s proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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 noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen’s qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

II. ANALYSIS

The Director found that the Petitioner qualified 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 of a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a post-doctoral research scholar at the University of [] [] Medical Center in [] Texas conducting biomedical research in cancer biology, immunology, and cancer immunotherapy in support of eventual advances in disease treatment and prevention. The Petitioner proposed to endeavor to continue their research in these fields to potentially address clinical issues and promote public health by “researching CD8+T cells, dendritic cells, and other cancer immune therapies.”

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

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, 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 Director determined that the Petitioner provided sufficient evidence to meet this prong of the *Dhanasar* framework. After reviewing the Petitioner's submission, such as probative letters of support from experts in the fields of cancer biology, immunology, and cancer immunotherapy describing the Petitioner's experience, work, and proposed endeavor in personalized and meaningful detail, the Petitioner's detailed statement of their endeavor describing the future research they proposed to undertake and its potential prospective impact on eventual advances in cancer treatment, and evidence of the new goals of the National Institutes of Health's Cancer [redacted] to reduce the death rate from cancer by at least 50 percent over the next 25 years, we agree that the broader implications of the Petitioner's substantially meritorious research rise to a level of national importance.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes the Petitioner's curriculum vitae, their academic records, published and presented work, peer review activity, and documentation of numerous articles that cited to their research findings.¹ In addition, the Petitioner offered reference letters describing their expertise in tumor cell repression, antitumor effects during radiation, and tumor radioresistance, and their past record of success in these and other related fields. Several experts referenced specific examples of how the Petitioner's research has directly affected their field. As corroborating documentation regarding the significance of their work, the Petitioner provided evidence showing that their published work has been frequently cited by independent researchers, and that the rate at which their work has been cited is high relative to others in the field. The Petitioner's experience and expertise as a biomedical researcher in cancer biology, immunology, and cancer immunotherapy, published articles, citation evidence, progress in their field, prospects for future employment and/or collaboration in joint ventures in their field position them well to advance their proposed endeavor. So the Petitioner has demonstrated that they satisfy the second prong of the *Dhanasar* framework.

C. Whether On Balance a Waiver is Beneficial

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.² As a

¹ "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. competitive or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." See generally 6 USCIS Policy Manual, F.5(D)(2), <https://www.uscis.gov/policy-manual>.

² When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a

biomedical researcher of cancer biology, immunology, and cancer immunotherapy with a Ph.D. in cell biology and experience as an assistant professor at an international institute of higher education, the Petitioner possesses considerable education, experience, and expertise in analysis of biological materials at a cellular level to study attributes and behavior under set conditions with an aim to influence outcomes. The record also demonstrates the potential for widespread medical benefits for cancer treatment associated with the Petitioner's most recent research revealing combining emricasan with radiation successfully generated synergistic therapeutic effects in tumor cells. In addition, the Petitioner has documented their past successes in advancing novel research for cancer immunotherapy relating to the behavior of irradiated tumor cells which bridged a gap of understanding of intrinsic and extrinsic DNA signaling which could play a role in immune activation. They have also demonstrated the significance of their proposed work advancing the treatments and therapeutic outcomes to reduce cancer morbidity and mortality. So we conclude that the Petitioner 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 they have established that they are eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

strong positive factor: (1) The person possesses an advanced STEM degree, particularly a Ph.D; (2) The person will be engaged in work furthering a critical and emerging technology of other STEM area important to U.S. competitiveness; and (3) The person is well positioned to advance the proposed STEM endeavor of national importance. *See generally USCIS Policy Manual, supra*, at F.5(D)(2).