



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 27463908

Date: OCT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician and professor of obstetrics and gynecology, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. See 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 EB-2 immigrant 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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, 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 USCIS may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- 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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record reflects that determination.²

The remaining issue to be determined on appeal 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. The Director determined that the Petitioner's endeavor has substantial merit and is of national importance. However, the Director determined that the record did not demonstrate that the Petitioner is well positioned to advance the proposed endeavor, and 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. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.³

A. Substantial Merit and National Importance

The Petitioner proposes to work as a professor and academic researcher in gynecology and obstetrics at a U.S. university. The Petitioner's statement indicates she intends "to elevate the standards of medical education and the medical field by working as a medical professor and [sic] researcher developing new teaching techniques and innovations" in the fields of gynecology and obstetrics. She intends to continue her "development of pedagogical materials and techniques" for use in medical education.

The Director determined that for the first prong of the Dhanasar framework, the Petitioner's endeavor has substantial merit and national importance. We agree with the Director that the record shows that the Petitioner's proposed endeavor as a professor and academic researcher in gynecology and obstetrics is of substantial merit. However, upon de novo review, while we agree with the Director that the Petitioner's proposed endeavor of academic research relating to the development of pedagogical materials and techniques for gynecology and obstetrics has national importance, we do not agree that her proposed endeavor relating to her teaching activities as a professor to medical students has national importance.

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).

² To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma for a *titulo de medico* from [redacted] Universidade [redacted] in Brazil in 2010, her academic transcripts, and an academic evaluation. The record demonstrates that she attained the foreign equivalent to a U.S. doctorate in medicine. See 8 C.F.R. § 204.5(k)(3).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* Further, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her work.

With respect to the Petitioner’s teaching of medical students, while this endeavor has substantial merit, the record does not establish that her teaching work would impact her field of obstetrics and gynecology or the U.S. healthcare industry more broadly, as opposed to being limited to her students and her employer. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Accordingly, without sufficient documentary evidence of the broader impact of her proposed teaching activities, the Petitioner’s proposed endeavor of being a professor for a U.S. university does not meet the national importance element of the *Dhanasar* framework.

With respect to her academic research, the Petitioner asserts that she intends to conduct research to develop gynecology and obstetrics pedagogical materials and techniques for medical students. The Director’s decision referenced two recommendation letters from the Petitioner’s colleagues who worked with her while she was a gynecology and obstetrics professor. The letters explain that the Petitioner developed academic projects for her classes, including a low-cost cervix anatomical model and entrustable professional activities for student knowledge assessment. Her colleagues attested to the projects assisting medical students’ education and the record includes evidence of the Petitioner presenting the projects at conferences to professionals in her field. The record also includes research articles by the Petitioner about her pedagogical materials and techniques. Based on the record, the Petitioner has shown that her academic research has the potential to have a prospective impact on the field of teaching medical students. Accordingly, the evidence in the record demonstrates the Petitioner’s proposed endeavor relating to her academic research for developing gynecology and obstetrics pedagogical materials and techniques has national importance under *Dhanasar*’s first prong.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to 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 determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner was well positioned to advance the proposed endeavor of research in her field.

As previously noted, the Petitioner’s teaching duties do not meet the first prong of the *Dhanasar* framework. Our analysis under this prong will focus on whether the Petitioner is well positioned to advance her proposed academic research. Upon de novo review, the evidence in the record is

insufficient to demonstrate that the Petitioner is well positioned to advance her proposed academic research under *Dhanasar*'s second prong.

The record shows that the Petitioner is a medical doctor and a professor of medical students specializing in obstetrics and gynecology. The Petitioner's statement indicates a part of her teaching is through realistic simulation, which is widely used in medicine and healthcare. She stresses her development of anatomical models for use by her medical students in simulation laboratories. Specifically, the record shows she developed low-cost cervical models for her students studying gynecology examinations and pap test collection. She also developed activities to test student knowledge, including [REDACTED] an interactive monopoly-style game to review gynecology and obstetrics knowledge, and entrustable professional activities, practice units used for teaching and assessment.

The record includes documentation of the Petitioner's statements, resume, academic credentials, medical certifications and licensing, training certificates, certificates of recognition, memberships, published articles, a book chapter, conference presentations, certificates relating to her teaching work, teaching materials developed by the Petitioner, and letters of recommendation relating to her teaching and the teaching materials she developed for medical students.

We acknowledge that the Petitioner received the foreign equivalent of a U.S. doctorate in medicine having received a titulo de medico from [REDACTED] Universidade [REDACTED] in Brazil in 2010. While the Petitioner's education renders her eligible for the underlying EB-2 visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance her proposed endeavor. In *Dhanasar*, 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 their proposed endeavor and education is merely one factor among many that may contribute to such a finding.⁴ Moreover, although the Petitioner has claimed on appeal that her advanced degree is in a science, technology, engineering, or mathematics field, she has not claimed that her proposed endeavor focuses on critical and emerging technologies or other areas important to U.S. competitiveness or national security.⁵

The Petitioner argues on appeal that her record of success is evidenced in her being invited to and participating in conferences where she presented her pedagogical materials and teaching techniques. The record shows that the Petitioner presented her simulation teaching materials and active teaching techniques at conferences, including International Association for Medical Education (AMEE) and International Meeting on Simulation in Healthcare (IMSH). Although letters of recommendation from the Petitioner's colleagues at her employer university attest to the Petitioner's conference presentations and the use of her pedagogical materials internally, the record does not show these presentations led to use of her academic research and pedagogical materials outside of her students and immediate co-workers.

⁴ See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>.

⁵ See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(2).

The record includes articles co-authored by the Petitioner which were published in scientific journals and in a chapter of a book written by the Petitioner. The published materials relate to her active teaching methods and her development of materials for medical students. However, the record does not show that the published materials and the teaching methods and materials discussed in the publications have been used by others in the field or have garnered a level of interest from others in her field rendering the Petitioner well positioned to advance the proposed endeavor.

The Petitioner argues that recommendations letters from professionals in her field and her colleagues attesting to her development of pedagogical methods and materials demonstrate her being well positioned to advance her proposed endeavor. The letters submitted are from professors the Petitioner has worked with at her employer university, [REDACTED]. Although her colleagues generally attest to the Petitioner developing specific teaching materials and to her conference presentations, they do not show that the Petitioner's research methods and developed materials have been used outside of her classroom or the university. For instance, a letter from [REDACTED] a medical genetics specialist and professor at [REDACTED] attests to the Petitioner being an excellent physician and clinical teacher having witnessed her commitment to enhancing teaching with low-cost simulation material and the publication of her master's thesis which was presented at a conference. Another letter from [REDACTED] who specializes in mastology and is a professor at [REDACTED] attests to the Petitioner's teaching and her "innovative skills" by creating new teaching material which have been noticed by "congresses" at the AMEE conference and by the international medical community. However, besides having her work presented at the conferences, the record does not show the Petitioner's materials or teaching techniques have been used in the field outside of [REDACTED] students, or that other academic institutions have an interest in using her materials and techniques.

The evidence regarding the Petitioner's previous development of pedagogical materials and teaching techniques does not demonstrate a record of success sufficient to establish that she is well positioned to advance her research. The record includes evidence that the Petitioner co-authored articles based upon her development of pedagogical materials and teaching techniques that were published in medical journals and that she presented her work at conferences. 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 the proposed research. 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner has not shown that her research and development of pedagogical materials and teaching techniques have served as an impetus for significant progress in the field of teaching students of obstetrics and gynecology, or that her academic research work has generated substantial positive discourse in the broader teaching community. Nor does the evidence otherwise demonstrate that her academic research work and development of pedagogical materials and teaching techniques constitute a record of success or progress in her area of research. Accordingly, we find that the Petitioner does not meet the second prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently establish the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility under the third prong of the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues 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).

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the Dhanasar analytical framework, we find that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.