



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

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

In Re: 26926298

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, seeks employment-based second preference (EB-2) 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 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 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 U.S. Citizenship and Immigration Services (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;

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).

- 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.² 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.

A. Substantial Merit and National Importance

For the first prong of the Dhanasar framework, the Director determined that the Petitioner's endeavor has substantial merit and is of national importance. Although the Director did not provide reasoning for its findings, we agree that the record shows that the Petitioner meets the first prong of the Dhanasar framework.

The record indicates she intends to continue working as a scientific researcher in the field of geology. The Petitioner's professional plan states her proposed endeavor includes analyzing microfossils and environmental chemicals looking for anthropic changes, determining how human interferences affect the environment, and finding solutions for environmental recovery. Accordingly, the Petitioner has shown that her proposed endeavor has substantial merit.

The Petitioner has also demonstrated that her proposed endeavor has national importance. The record includes evidence showing the potential prospective impact of the Petitioner's proposed endeavor. See Matter of Dhanasar, 26 I&N Dec. at 887. The Petitioner indicates in her professional plan that she plans to continue her research "in assessing the anthropic action in the environment, as the generated pollution causes morphological changes in the microfossil shells" to determine the changes in sea levels. The Petitioner provided supporting documentation relating to her research work in foraminifera, including scientific research papers, articles, and letters from her colleagues. Two letters from [REDACTED] associate professor of coastal and marine geology at the Department of Marine Science at [REDACTED] University, explain that since 2019, the Petitioner has been working for the university as a research affiliate on sponsored projects, including a study related to the exploration of near-coast mineral resources and another ongoing study "addressing the chronic harbor silting issue in the port of [REDACTED] SC, a situation which already shows severe economic consequences for the local traditional businesses, tourism, and the local industry." Such documentation shows the Petitioner's proposed endeavor has broader implications in the Petitioner's field of geology.

² The Petitioner submitted her master's degree in geology from Universidade [REDACTED] in Brazil, her academic transcripts, and an academic evaluation opining that her master's degree is the foreign equivalent to a U.S. master's degree in geology.

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. *Matter of Dhanasar*, 26 I&N Dec. 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. Upon de novo review, we agree with the Director that the Petitioner does not meet the second prong of *Dhanasar*.

The Petitioner argues on appeal that the Director's decision has "numerous erroneous conclusions of both law and fact." (emphasis omitted). The Petitioner points to evidence submitted with the petition and with her reply to a request for evidence, arguing that the documentation submitted establishes by a preponderance of the evidence that the Petitioner is well positioned to advance the proposed endeavor.

To establish the Petitioner is well positioned to advance her proposed endeavor, the record includes the following: the Petitioner's resume; her academic records; documentation relating to her undergraduate student scholarship; recommendation letters from her current employer, previous colleagues, her university professor, and her academic advisor; an opinion evaluation; her professional identity card as a geologist from the Federal Council of Engineering and Agronomy in Brazil; her income tax returns; a membership card indicating she joined the Geological Society of America as a "member-fellow" on May 9, 2021; online profile indicating she is a member of the Palentological Society until December 31, 2021; certificates of course completions; scientific articles co-authored by the Petitioner; certificates indicating scientific articles co-authored by the Petitioner were presented at conferences; and a final report of a feasibility study from [redacted] University.³

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence. After considering the totality of the circumstances⁴, we find the Petitioner did not demonstrate by a preponderance of the evidence that she is well positioned to advance the proposed endeavor under the second prong of *Dhanasar*.

The Petitioner argues on appeal that she is highly qualified to be a researcher. She claims that her academic success is evidenced by her receipt of degrees from "one of the best universities in the

³ While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

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

world.” The Petitioner further argues that the letters of recommendation, scientific articles, and certificates of presentation of her articles show her professional success in her field.

As discussed above, the Petitioner plans to continue scientific research in geology. Specifically, she proposes to research the anthropic action in the environment in order to determine the causes for changes in sea levels. We acknowledge that the Petitioner has received the foreign equivalent of a bachelor’s degree in geology and of a master’s degree in geology, both from Universidade [redacted] [redacted] in Brazil. 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.⁵ Moreover, we note the Petitioner has not claimed her advanced degree in a science, technology, engineering, or mathematics field and her proposed endeavor focus on critical and emerging technologies or other areas important to U.S. competitiveness or national security.⁶

The record shows that she has conducted research in her field in Brazil and in the United States, as evidenced with scientific articles, employment letters, and letters of recommendation. However, the record does not demonstrate the significance of her role in the research projects, that her involvement in the projects helped advanced her proposed endeavor, or that they make her well positioned to advance her proposed endeavor.⁷

On appeal, the Petitioner emphasizes that a letter from [redacted] her university colleague, helps demonstrate the Petitioner is well positioned based on her past achievements and her experience. Although the letter attests to the Petitioner assisting her colleague’s master’s degree research and that the Petitioner is a diligent and thorough researcher, it does not detail the Petitioner’s achievements or contributions to her proposed endeavor. Letters from the Petitioner’s academic advisor and from her university professor similarly attest to the Petitioner’s work ethic and professional research skills; however, they also do not detail the Petitioner’s achievements and contributions to her field or describe how she is well positioned to advance her proposed endeavor.

Two letters from [redacted] associate professor at [redacted] Geosystems Research Lab at [redacted] University, explain that the Petitioner’s experience researching foraminifera ecology was of value to two of the professor’s research projects. Although the letters show that the professor values the Petitioner’s research work and expresses interest in having the Petitioner continue assisting as a researcher for the professor’s upcoming projects, the letters do not detail how the Petitioner’s research findings have had an impact in the field, assisted others in the field, or otherwise reflect a record of success or progress showing she is well-positioned to advance the proposed endeavor.⁸ The record includes the final report related to one of the professor’s projects. The record

⁵ See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

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

⁷ See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

⁸ See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

does not show that she developed the project or provided a significant role in the project.⁹ While the report states that the Petitioner was part of the project as one of 16 associated students, [REDACTED] is named as the principle investigator with another individual being a collaborative partner.

The record includes research articles co-authored by the Petitioner while she worked with Universidade [REDACTED] in Brazil. The record also includes certificates showing that many of the research articles were presented at conferences. However, the record does not include evidence demonstrating the extent to which the Petitioner contributed to the scientific research, or to what extent the scientific research impacted the field of geology. While some of the articles were presented at conferences, the record does not include evidence showing that the Petitioner's work has influenced the field of endeavor.

While we recognize that research adds 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 their proposed endeavor. We examine 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 support such a finding. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner, however, has not demonstrated that her published articles have assisted to progress the field of geology, or that the articles have generated substantial positive discourse in assessing the anthropic action in the environment in order to determine the causes for changes in sea levels. Nor does the evidence show that her research findings have been frequently cited by independent researchers or otherwise constitute a record of success or progress in advancing research relating to her proposed endeavor.

The record includes an opinion from [REDACTED] stating that the Petitioner is well-positioned based on her achievements, education, and experience. The opinion lists the Petitioner's education, her employment history, her scientific articles, her memberships, and excerpts from recommendation letters. The opinion states that the Petitioner "has had a leading role in defining projects, especially those related to the geology field." However, based on the evidence in the record, we disagree with this assessment. While the Petitioner appears to have participated in research projects and co-authored scientific articles, the record does not demonstrate that the Petitioner has had a leading role, or that the projects have been defining.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, the opinion lists the Petitioner's academic and professional accomplishments; however, it is lacking probative value since it does not

⁹ See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

sufficiently detail the basis for finding the Petitioner had a “leading role” in research projects, or that the projects were “defining” for the field.

For these reasons, the Petitioner has not demonstrated that she satisfies the second prong of the Dhanasar framework. Because the documentation in the record does not sufficiently establish that 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 record does not establish that the Petitioner has met the requisite second prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.