



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 9057733

Date: JULY 23, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an **organic chemistry researcher**, 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.** 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.**

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, **8 U.S.C. § 1361. 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.** 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While 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).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. 3

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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 foreign national. To determine whether he or she 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) 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.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ 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.

At the time of filing, the Petitioner was working as a postdoctoral research associate in the Department of Chemistry at [redacted] University [redacted].⁵ He previously served as an assistant professor at [redacted] College in Pakistan from August 2014 until October 2015.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research aimed at developing efficient routes for the "synthesis of [redacted]", "methodologies for the rapid synthesis of [redacted] molecule collections for high throughput screening" (HTS), and "new chemical reactions" involving [redacted]. The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit and national importance. For example, he presented information about the U.S. pharmaceutical industry's drug development work and the incidence of cancer worldwide. In addition, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed organic chemistry research, we agree with the Director's determination that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, and conference presentations. He also offered evidence of articles that cited to his published work, and letters of support discussing his past research projects.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Chemistry from the University of [redacted] in August 2014. He also presented diplomas indicating that he received a Master of Philosophy degree in Applied Chemistry from University of Engineering and Technology [redacted] (2008) and a Master of Science degree in Chemistry from [redacted] University (2002).

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

The Petitioner contends on appeal that his education, research experience in organic chemistry, published work, citation evidence, recommendation letters from independent references, and inclusion of his chemical compounds in the PubChem Open Chemistry Database demonstrate that he is well positioned to advance his proposed endeavor. 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.

In letters supporting the petition, several references discussed the Petitioner's organic chemistry research projects at [redacted] and University of [redacted].⁶ For example, regarding the Petitioner's work involving [redacted] as a "system for the study and application of [redacted] compounds," [redacted] [redacted] associate professor in the Department of Chemistry at [redacted] University, stated that the Petitioner developed a system "based on [redacted]" which "works within a medium that resembles a living body." [redacted] asserted that the Petitioner "found that he could control the specific time and place of release, which is a dramatic improvement in the study of [redacted] compounds, including drugs," but he does not offer specific examples of how the Petitioner's system has been implemented, utilized, or applauded by others in the field. [redacted] also claimed that the Petitioner's work "has been influential to his peers" and offered the example of [redacted] who cited the Petitioner's work in a paper, entitled [redacted] [redacted] [redacted]'s paper, however, does not distinguish or highlight the Petitioner's work from the 28 other articles he cited to in his paper.⁷

With respect to the Petitioner's research concerning [redacted] [redacted], [redacted] professor of medicinal chemistry at [redacted] indicated that the Petitioner, "through a clever recognition of the properties of a family of compounds that [redacted] devised a route to make compounds that could serve as efficient drug carriers." While [redacted] asserted that the Petitioner's research paper on the subject "is destined to be a new standard in this field," he did not explain how the Petitioner's findings have already affected drug development processes or otherwise constitute a record of success in his field.

In addition [redacted] professor at [redacted] University [redacted], stated that the Petitioner has collaborated with his research group at [redacted] "in developing a tool box of [redacted] for dopamine, serotonin, and other receptors." [redacted] asserted that the Petitioner devised "a method of synthesizing [redacted] in large quantities" and that this work "made conducting our experiments easier and more efficient," but he did not provide specific examples indicating that the compounds developed by the Petitioner have impacted the pharmaceutical industry, have served as an impetus for progress or generated positive discourse in his field, or otherwise represent a record of success or progress rendering him well positioned to advance his proposed endeavor.

Furthermore, [redacted] professor of medicinal chemistry at University of [redacted] in Italy, stated that the Petitioner's work "has helped establish the [redacted] molecule synthesis method."

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁷ The record includes a copy of [redacted]'s paper in which he cites to the Petitioner's work as one of six examples for which [redacted] reaction was reported "as a practical synthetic method in various areas of organic chemistry."

[redacted] indicated that the Petitioner “synthesized several types of [redacted] scaffolds using the [redacted] approach,” but the record does not show that the Petitioner’s [redacted] method has affected the pharmaceutical industry or otherwise reflects a record of success in the organic chemistry field.

Likewise, [redacted] associate professor in the Department of Chemistry at [redacted] University, indicated that the Petitioner “has developed [redacted] reaction strategies for the synthesis of [redacted] that are streamlined and more efficient than previous methods.” [redacted] asserted that the Petitioner’s “research on [redacted] synthesis methodology has been influential to the field of chemistry, as citations to his publications attest.” As it relates to the citation of the Petitioner’s work, the record includes July 2018 information from Google Scholar indicating that his five highest cited articles in *Journal of Organic Chemistry* (2015), *Organic Letters* (2013), *ACS Combinatorial Science* (2011), *Journal of the American Chemical Society* (2017), and *Chemical Communications* (2011) each received 11, 10, 9, 5, and 3 citations, respectively. The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors.

Furthermore, the Petitioner provided October 2017 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including “Chemistry.” This documentation from Clarivate Analytics 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.” Additionally, the Clarivate Analytics citation data is from October 2017, and therefore does not capture citations that occurred after 2017, while the Petitioner’s Google Scholar citation report is dated July 2018.⁸ Because the Clarivate Analytics data is not contemporaneous with the Petitioner’s Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Regardless, the Petitioner has not demonstrated that the number of citations received by his articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

The Petitioner maintains that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. 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, experience, and expertise 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. Moreover, while the Petitioner holds the same number of graduate degrees as Dr. Dhanasar and this level of education renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments and citations by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor, and education and citations are merely two factors among many that may contribute to such a finding.

⁸ A webpage accompanying the Clarivate Analytics information states that its citation “data is updated six times a year” (every two months).

Additionally, while the Petitioner points to the fact that his work has been included in the PubChem Open Chemistry Database, ~~the record does not establish that his research has been implemented, utilized, or applauded by those viewing it. While inclusion in this database corroborates that he has disseminated his work, it is not sufficient to demonstrate a record of success of, or interest in, his research.~~

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies at University of [redacted] and while working at [redacted], 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 that his published and presented work has served as an impetus for progress in the organic chemistry field or that it has generated substantial positive discourse in the pharmaceutical industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research aimed at the synthesis of [redacted], the rapid synthesis of [redacted] molecule collections for HTS, and new chemical reactions involving [redacted] molecules. 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.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, 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. ~~Here, the Petitioner claims that he is eligible for a waiver due to his education, research experience and accomplishments, the importance of his field, and the impracticality of labor certification.~~ However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.