



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

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

In Re: 33943971

Date: SEP. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a scientist, 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 although the Petitioner qualifies as a member of the professions holding an advanced degree, the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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 discretion,¹ 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.

Id.

II. ANALYSIS

The Director concluded that the Petitioner qualifies for the EB-2 classification as an advanced degree professional, based upon obtaining a master of science degree in biotechnology and bioinformatics. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement is in the national interest. The Director found that the Petitioner did not establish any of the three required prongs of the analytical framework set forth in *Matter of Dhanasar*. On appeal, the Petitioner contends that she has established eligibility for a national interest waiver and that the Director's decision was unclear and not sufficiently supported by the record or by *Matter of Dhanasar*. Upon de novo review, we conclude, for the reasons discussed below, that the decision does not sufficiently analyze the record based upon the framework set forth in *Matter of Dhanasar*, and that a remand of the matter is therefore appropriate.

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. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's proposed endeavor is to utilize genetic engineering tools to enhance the regenerative capabilities of cardiac progenitor cells (a type of cardiac stem cells, also referred to as CSCs), to improve the treatment of cardiovascular diseases. Specifically, the Petitioner states that her research will focus on using CSCs "to enhance their secretome using lipid nanoparticles to deliver transcription factor encoding mRNA." The Petitioner states that she plans to pursue her proposed endeavor through employment as a scientist at a private company based in [REDACTED] Texas, and that she intends to publish and disseminate her biotechnologies research in peer-reviewed publications and through conference presentations.

The Director concluded that the Petitioner did not demonstrate either the substantial merit or the national importance of the proposed endeavor. But in concluding that the Petitioner did not establish the substantial merit of the endeavor, the Director appeared to conflate national importance with

¹ See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

substantial merit. For example, the Director concluded that, “the impact that [the Petitioner] will have as a researcher does not have substantial merit as it will only have one company benefiting from the [P]etitioner’s endeavor,” and that the Petitioner did not establish the substantial merit of the endeavor because the Petitioner did not sufficiently demonstrate “the impact of a single researcher on the industry.”

However, the potential prospective impact of the proposed endeavor is a consideration in whether the endeavor is nationally important, not in whether it has substantial merit. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Matter of Dhanasar*, 26 I&N Dec. at 889. Additionally, endeavors related to research, pure science, and the furtherance of human knowledge may qualify as having substantial merit. *Id.* On remand, the Director should consider whether research utilizing genetic engineering tools to enhance the regenerative capabilities of cardiac stem cells to improve the treatment of cardiovascular diseases is substantially meritorious, based upon the framework set forth in *Matter of Dhanasar*.

Regarding the national importance of the proposed endeavor, the Director stated that “simply being hired by a private company in the United States” does not rise to the level of national importance and that private companies “do not have to share findings and research to other companies or the general public.” The Director concluded that, “[a]ny research done while being employed in the company may stay within the company and not be disseminated, thus, the discoveries and findings that you may encounter could stay within the business and not be shared.” The Director also stated that the Petitioner submitted “numerous articles on the shortage of the specialized research” and that the “articles and reports evidence the shortage of specialized researchers” but that this is insufficient to demonstrate the endeavor’s national importance because the labor certification process is intended to address shortages of qualified workers in a field.

First, as the Petitioner points out on appeal, the Petitioner did not submit evidence about a shortage of researchers in the Petitioner’s field and did not rely on a finding of such a shortage to demonstrate the national importance of the endeavor. Therefore, the Director’s finding here does not appear to be based on the record before us. Second, the Director’s decision can be read to conclude that an endeavor that is pursued through employment at a private company categorically cannot be nationally important. We conclude that this is too restrictive and not supported by the language of *Matter of Dhanasar*. In *Matter of Dhanasar* we noted that “certain improved manufacturing processes or medical advances,” may rise to the level of national importance. *Id.* Although we did not specifically discuss private sector employment in *Matter of Dhanasar*, such advances and improvements may be associated with private sector innovations. We agree that private companies may not be obligated to share research findings or other developments, but the Petitioner states that she intends to continue to publish and disseminate her research. While the Director may conclude that the Petitioner’s statement is not sufficient on its own to credibly establish that the Petitioner will continue to publish, present, and disseminate research, the Director’s blanket statement that employment with a private company cannot be nationally important because research findings “may stay” within the company is too restrictive.

On remand, the Director should examine the specific evidence in the record to determine the potential prospective impact of the proposed endeavor, for example whether the record demonstrates that the endeavor, even if it is pursued through private employment, will nevertheless involve the presentation

and dissemination of research such that it is nationally important, or whether the endeavor has the significant potential to result in medical advances that have national or even global implications within a particular field, or otherwise demonstrates a potential prospective impact that is commensurate with national importance.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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.

Here, the Director did not discuss any of the specifically enumerated factors above and did not clearly analyze the evidence in the record as it relates to these factors. Instead, the Director concluded that the Petitioner did not establish this prong because she did not demonstrate “the impact of her work on the overall field beyond her specific employers” and that the proposed endeavor “is not specific enough to determine its broader impact.” These statements appear to again conflate the relevant issue with whether the proposed endeavor is nationally important.

The Director also stated that the Petitioner did not establish this prong because the Petitioner “intends to pursue positions as a scientist,” but a national interest waiver is not meant to enable a petitioner to “engage in a U.S. job search.” As noted by the Petitioner on appeal, this statement conflicts with the record and the decision itself, which demonstrates that the Petitioner has received and intends to accept a specific job offer. The decision also includes several confusing statements in its analysis of the second prong, for example stating that, “we have insufficient information concerning the Petitioner’s proposed future endeavor to conclude that it is not well-positioned based on her endeavor and previous achievements.” This statement does not clearly identify any evidentiary deficiency and does not meaningfully analyze the petition within the framework of *Matter of Dhanasar*.

On remand, the Director should consider whether the Petitioner is well-positioned to advance the endeavor based upon the factors enumerated in *Matter of Dhanasar* as well as any other relevant factors. For example, because much of the Petitioner’s prior publications and citation history relate to her research into stem cell therapy for the treatment of HIV, the Director may consider whether the Petitioner has sufficiently demonstrated a record of success “in related or similar efforts,” or whether the Petitioner’s prior research experience is not sufficiently related to the Petitioner’s current proposed endeavor. Additionally, as to the Petitioner’s “model or plan for future activities,” the Director may consider whether there is sufficient evidence in the record regarding the company at which the Petitioner intends to be employed, its business model and operations, its availability of funding for the Petitioner to pursue the proposed endeavor, and other factors that would impact the feasibility of the Petitioner advancing the proposed endeavor through this intended employment.²

² While not required, USCIS considers a job offer or communications with prospective employers relevant to demonstrate the circumstances or capacity in which the petitioner intends to carry out the endeavor and the feasibility of that plan. See generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual>.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a 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, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

In concluding that the Petitioner did not establish the third prong of the *Dhanasar* framework, although the Director listed the relevant factors above, the Director did not specifically discuss and analyze the evidence in the record as it relates to these factors. Instead, the Director discussed only the first and second prongs, stating that “[t]he issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar*'s first prong and if the Petitioner is well-positioned to advance the proposed endeavor as a second prong.” While we agree that the issue of whether a petitioner has established eligibility under the first and second prongs is relevant, the Director did not discuss the enumerated factors of the third prong at all.

An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the Director's decision based on this deficiency. On remand, the Director should review the entire record in considering whether the Petitioner has sufficiently identified her proposed endeavor and whether she has established eligibility under each of the three prongs of the *Dhanasar* framework.

III. CONCLUSION

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.