



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

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

MATTER OF P-Y-G-

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biomedical engineering 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). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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 additional evidence and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

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.

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 recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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

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*).

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 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.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole 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. For the reasons discussed below, we find she has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner is currently working as a biomedical engineering researcher in the [redacted] [redacted] University. Her current research is aimed at developing novel drug delivery systems using biopolymers as carriers for cancer treatment. She states that she intends to utilize her expertise in biomedical engineering of drug delivery systems and pharmacodynamics to develop new cancer vaccines that modulate the immune system to prevent the development of immunological cancers. Specifically, she intends to further her work on albumin-based drug delivery systems to "utilize the lymph nodes as a targeting system for cancer vaccines." The record includes letters of support indicating that the Petitioner's proposed work stands to contribute to the development and application of improved delivery of cancer treatments. For example, Dr. [redacted] a professor of genetics and bioengineering at [redacted] University in [redacted], explains that the Petitioner's "research is centered on targeted drug delivery, a method for eradicating cancerous cells while sparing the surrounding health cell," "boosting the effectiveness and minimizing the side effects of cancer drugs." Accordingly, we find that the Petitioner's proposed work to advance research in biomedical engineering of advanced drug delivery systems for cancer treatment has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. She asserts that her research furthers the development of "drug formulations that can target tumors effectively with minimal toxic side effects" "dramatically lowering the cost associated with cancer therapies" and "prolonging and saving the lives of Americans suffering from cancer." Dr. [redacted] a professor at the [redacted] [redacted] University, states that the Petitioner's continuing work "holds significant utility for a wide variety of conditions that benefit from enhanced

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner earned the equivalent of a master of science in biotechnology from the University of [redacted] in 2010.

therapeutic targeting” and that he has “made ample use of [her] discoveries” in his own investigations into therapeutic targeting methods. Dr. [] further notes that she is a “pioneer in nanocarrier formulation for cancer medications” and that the Petitioner’s research fundamentally advances drug carrier design research in the United States. Following a review of her work and implementation of her techniques in his own research, Dr. [] recommended that Petitioner’s configuration for achieving anti-tumor efficacy of drug delivery particles become universally implemented.

The Petitioner has submitted documentation indicating that the benefit of her proposed biomedical cancer research has broader implications, as the results are disseminated to others in the field through scientific journals and conferences. In addition, she provided research from the [] reporting cancer diagnoses, treatment, and death rates along with the formidable cost of the disease to individuals and the economy as a whole. As the Petitioner has documented both the substantial merit and national importance of her proposed research, we find that the record supports the Director’s finding that she 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’s qualifications. The Petitioner submitted her curriculum vitae, academic records, awards, evidence of the commercialization of her methods, and peer review activities. She also provided evidence of her published and presented work and documentation of articles that cited to her findings. In addition, the Petitioner offered reference letters describing her expertise in developing advanced drug delivery systems using nanotechnology and biopolymers, and her past record of success as a biomedical engineering researcher.

We find that the Petitioner’s past experience renders her well positioned to advance her proposed endeavor aimed at developing novel drug delivery systems for cancer treatment. For example, Dr. [] a professor at the department of science and technology innovation at the University of [], discusses the Petitioner’s research into the toxicity of doxorubicin as a cancer-fighting therapy through the use of carbohydrate carrier dextran sulfate. He indicates that the Petitioner’s results “shed new light on the role of electrostatic interaction in the dissemination of chemotherapy agents throughout the body” and explains that “she is one of a scarce handful of scientists in this area that is capable of advancing knowledge about the attaching drugs to endogenous macromolecules in the body.” He explains that many scientists all over the world are “using [the Petitioner’s] method to improve the effectiveness of their own drug delivery methods.” Similarly, Dr. [] professor of medical oncology at the [] University, writes that he has directly implemented the Petitioner’s drug delivery method. He states that her “creation of a novel DOX nanoparticle formulation has unprecedented anticancer efficacy and low toxicity, allowing researchers to target malignancies such as osteosarcoma, hemangiosarcoma, and soft tissue sarcomas.” He notes that her “discoveries have had such a significant impact on my own.”

Additionally, the record includes evidence that the Petitioner's discoveries have been implemented commercially and in several phase one clinical trials. Specifically, Dr. [] performed a phase one clinical study of her novel nanoparticle formulation. His study demonstrated a longer half-life and bioavailability using the Petitioner's configuration when compared with the standard drug formulation, making her nanoparticle formation an "excellent candidate" for cancer treatment in human clinical trials. The record reflects that [] a pharmaceutical company specializing in the development of chemically modified nanomaterials into drugs, has taken steps to commercially develop the Petitioner's nanoparticle carrier platform delivering breast cancer drugs. Thus, the significance of the Petitioner's research in her field is corroborated by evidence that other prominent researchers are modifying their drug delivery protocols based upon her research and publications.

The record also includes citation evidence showing that the Petitioner's published work has been cited by independent researchers, and that the rate at which her work has been cited is high relative to others in her field. Such evidence helps show a past record of achievement that demonstrates the Petitioner is well positioned to advance biomedical engineering research. Finally, we note that the record indicates that the Petitioner's current employer, [] University, has offered her a postdoctoral position as a researcher developing genetically encoded biohybrid materials with the goal of developing novel drug delivery systems for cancer and diabetes treatment.⁴

In sum, the Petitioner's expertise in her field, published and presented work, record of success contributing to various research projects, and progress in the area of developing targeting drug delivery systems position her well to advance her proposed endeavor. Accordingly, we find that she 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. As a biomedical engineering researcher, the Petitioner possesses considerable experience and expertise in nanotechnology, biohybrid materials, and drug delivery systems. The record also demonstrates the widespread benefits associated with research developments in her field and their broad application in cancer research. The Petitioner has documented her past successes in advancing biomedical research and providing influential research findings. In addition, her work has garnered interest from other researchers throughout the greater scientific community who have found it to be promising and useful. Based on the Petitioner's track record of successful research and the significance of her ongoing drug delivery systems studies that advance U.S. scientific interests, we find that she offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her prospective position with [] to illustrate the capacity in which she intends to work and as evidence that she is well positioned to continue her work in this area.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find she has established eligibility for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.