



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

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

In Re: 14278244

Date: JUL. 08, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental engineer, 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 while the Petitioner had established her eligibility as a member of the professions holding an advanced degree, she did not show that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that she is eligible for, and otherwise merits, a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of 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 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.²

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.

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 To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

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 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 Petitioner submitted evidence that she earned a Ph.D. in civil engineering (with a concentration in environmental engineering) from the [REDACTED] in 2017. In his decision, the Director found that the Petitioner qualifies for the underlying EB-2 classification, and we agree. Therefore, the sole issue for consideration is whether she qualifies for a national interest waiver under the *Dhanasar* framework and otherwise merits a favorable exercise of discretion.

A. Substantial Merit and National Importance of the Proposed Endeavor⁴

At the time of filing her petition, the Petitioner was employed as an Environmental Consultant with the [REDACTED].⁵ A letter from [REDACTED] describes this work as involving the review and statistical analyses of nutrients in surface water, as well as identifying the source of iron impairment. She stated that her proposed endeavor was to continue her work in environmental science by “establish[ing] frameworks through incorporating novel experimental techniques, statistical models and life cycle assessment analysis for solid waste and wastewater treatment in the future.” She then identified three goals of her research, which included the “development of models to describe products obtained from solid waste thermal treatment” and “modification and optimization of ultrafiltration membrane for wastewater treatment.” Her third research goal was stated as the “determination of specific pollutant limit concentration in surface water and reduction of specific pollutant concentration using membrane technology.”

In responding to the Director's request for evidence (RFE), the Petitioner altered her description of her proposed endeavor by adding that she “plan[s] to develop methods to better evaluate water quality and forecast algae blooms.” She also repeated the first two of her three research goals, but changed the third goal to the “evaluation of water quality and forecasting of algae blooms in Florida surface water using trend analysis.” To demonstrate the substantial merit of her third research goal, she

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

⁴ We note that the Director did not include an analysis of the first prong factors in his decision, or provide a conclusion as to the proposed endeavor's substantial merit and national importance. He also did not seek further evidence in support of the first prong, and did not challenge the Petitioner's assumption that she met the first prong in her response to the RFE.

⁵ 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 employment to illustrate the capacity in which she intends to pursue her endeavor.

submitted information from the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) about algal blooms and the toxins that they may produce which can sicken people and animals and harm the environment. In support of the substantial merit of her other research goals, she submitted information about the environmental impact of food waste disposal. In addition, a letter from [redacted] of [redacted] notes that the Petitioner's proposed research in the thermal treatment of solid waste "brings us closer to harnessing this resource (food waste) for multiple purposes," such as fertilizers, while also reducing landfill methane emissions. This evidence establishes the substantial merit of her proposed endeavor, as it proposes to advance scientific knowledge and improve methods to control the environmental impact of food waste and the pollution of bodies of water.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of her work. With regard to her research proposal relating to the testing and analysis of surface water, she referred to the Clean Water Act and its goal of "address[ing] water pollution and all surface water qualities..." in her statement. She further explains that she plans to use statistical analysis to develop a method of predicting the trend of nutrients which lead to algae blooms and share this method across [redacted] and the [redacted].

Turning to the Petitioner's other research goals, she submitted several reference letters which show that her proposed research has and will continue to benefit the broader scientific community by adding to the knowledge of hydrothermal carbonization (HTC) technology and the design and synthesis of ultrafiltration membranes. In addition, the evidence indicates that much of her research on HTC was previously supported by, or done in collaboration with, the United States Department of Agriculture's Agricultural Research Service under programs which focused on waste treatment. As such, we conclude that she has established the national importance of her proposed endeavor, and meets the requirements of 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. Here we determine whether the petitioner has established that they are well positioned to advance the endeavor, in terms of a number of factors including, but not limited to, education, experience, record of success, plan for future activities, and the interest of relevant entities or individuals in the proposed endeavor. As stated above, the record shows that the Petitioner holds an advanced degree with a specialization in environmental engineering, which has provided her with the necessary education to advance her proposed endeavor. She also submitted copies of her peer-reviewed papers, evidence relating to other researchers' citations to these papers, and evidence of her service as a peer reviewer for scholarly publications in her field. In addition, the record includes several reference letters from other researchers who have not worked with the Petitioner but who have cited to her work.

Most of this evidence concerns the Petitioner's research on HTC technology, including several letters focusing on her work in applying this process to food waste. For example, [redacted] a researcher at the [redacted], describes this research and states that the models developed by the Petitioner have furthered understanding about the HTC process. He also indicates that in his own work, the Petitioner's models "provide necessary additional background to our

project,” and notes that another group of researchers have used an equation in the Petitioner’s work to support their own.

Another reference letter, from [redacted] of the [redacted], states that the Petitioner’s HTC research “promote[s] continued research on liquid-phase treatment to ensure that the HTC process is as environmentally friendly as possible.” He also notes that he has built upon the Petitioner’s research in his own work, the success of which “would not have been possible without the work first conducted by [the Petitioner].” [redacted] concludes that the Petitioner’s work on the HTC process “have been remarkable contributions in this area, helping to create clear guidelines of how best to optimize the HTC process...”

~~The record also includes evidence from Google Scholar showing the number of citations to the~~ Petitioner’s published work, consisting of more than 20 publications, as well as partial copies of some of the articles in which those citations appear. This evidence shows that her research has been frequently referenced by other researchers with whom she has not collaborated, and serves to support the statements from the above letters and others in the record regarding her record of success in advancing her endeavor. It thus helps to demonstrate that the Petitioner is well positioned to advance her proposed research in the United States.

The Petitioner’s experience and expertise in the field of environmental engineering, the record of her published work and its influence on the work of others in her field, and her progress in advancing HTC technology position her well to advance her proposed endeavor. Accordingly, we disagree with the Director and find that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine the Benefit of a Waiver to the United States

As explained above, the third prong of the *Dhanasar* framework requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the EB-2 classification’s requirement of a job offer, and thus of a labor certification. The evidence shows that the Petitioner’s research on the thermal treatment of solid waste and water quality has the potential to provide widespread benefits to the United States in terms of reduction of waste, development of reusable energy and the prediction of harmful algae blooms, and that her education, experience, and record of success in these endeavors position her well to advance them. We therefore find that she offers contributions of such value that, on balance, they would benefit the United States even assuming the availability of other qualified U.S. workers.

III. CONCLUSION

The Petitioner has established that she qualifies as a member of the professions holding an advanced degree, and that she meets the three prongs of the *Dhanasar* framework. We find that is eligible for, and otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.