



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

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

In Re: 12483763

Date: AUG. 3, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a civil 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 the Petitioner 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 documentation and 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 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.

Furthermore, 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.

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 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)

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).

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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree, and we agree with that determination.⁴ The remaining issue for consideration is whether he 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 Endeavor⁵

At the time of filing, the Petitioner was pursuing his Ph.D. in civil engineering and water resources engineering at the [REDACTED]. A letter from [REDACTED], Research Assistant Professor in the Department of Civil Engineering and Center for Environmental Resource Management at the [REDACTED], indicates his interest in hiring the Petitioner as a postdoctoral research associate on prediction of streamflow and hydrometeorological extremes upon completion of his doctoral studies, noting that the Petitioner will assist him with predictive modeling for hydrological systems on two water resource management projects based in the [REDACTED] region and in [REDACTED].⁶

The Petitioner stated that his proposed endeavor was to continue his research on hydrology and water resource management, noting that “[u]nderstanding the behavior of underlying phenomena contributing to river flows and incorporating them in hydrological models substantially improves our predictions of daily streamflow as well as river flow extremes in the form of floods and droughts.” He then identified the following three primary goals of his research:

1. Developing a hydrological model that accounts for soil moisture and other factors underlying streamflow dynamics in order to accurately represent and predict streamflow generation;
2. Expanding his previous research on flooding patterns to streamflow gauging stations data from all twenty-one water resource regions in the United States in order to more comprehensively predict flooding and other hydrometeorological extremes; and
3. Optimizing and generalizing his originally developed risk-informed decision-making framework for broader applications in hydropower generation.

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

⁴ The Petitioner submitted evidence that he holds a Master of Applied Science in Civil Engineering from the [REDACTED], along with an academic evaluation equating his foreign degree to a U.S. master's degree.

⁵ We note that while the Director concluded that “the petitioner submitted sufficient evidence that his endeavor has substantial merit and national importance,” he did not include an analysis of the first prong factors in his decision.

⁶ 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 consider information about his employment to illustrate the capacity in which he intends to pursue his endeavor.

The Petitioner claims that his proposed research is of great importance, noting that the models he intends to develop “provide vital insights into the availability of water resources over time.” Specifically, he states that “[s]uch information enables water resource planners to allocate the finite water supply efficiently, including in the event of flooding or water scarcity.” To demonstrate the substantial merit of his research, he submitted information from [redacted] about how predictive models are a key strategy for mitigating global water scarcity and reducing the socioeconomic toll of floods and droughts. He also submitted a report from the [redacted] Office of Energy Efficiency and Renewable Energy discussing the benefits of hydropower as a sustainable and reliable fuel source and its benefits in relation to flood control, irrigation, and water supply.

In addition, a letter from [redacted], Assistant Professor of Civil and Environmental Engineering at the [redacted] at [redacted], states that the Petitioner’s proposed research addresses an ongoing concern within the water systems engineering field, namely the need for accurate characterization of river flow regimes. He notes that “recent human modifications of the climate and landscape have increasingly altered flow regimes of rivers around the world, increasing the complexity of flow regime modeling.” Another letter, from [redacted], Professor of Water Engineering in the Biological and Agricultural Engineering Department at [redacted], comments on the need for accurate mathematical models, noting that such models are necessary in order to build dams, hydropower plants, reservoirs and other large-scale hydrological projects. This evidence establishes the substantial merit of the Petitioner’s proposed endeavor, as it proposes to provide vital insights on management of large-scale water projects and establish hydrology models to minimize the negative impacts of floods, droughts, and other related phenomena.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. With regard to his research proposals, he referred to a 2018 United States Geological Survey report which identified “data uncertainty as a foremost challenge affecting hydrological modeling efforts,” and stated that “appropriate assessment, monitoring, and modeling tools are indispensable for maintaining a clean water supply of drinking water to American consumers and to predict and mitigate extreme weather events caused by global climate change, including floods and sea level rise.” Based on this, the Petitioner noted that his “development of increasingly comprehensive predictive hydrological models is clearly relevant to improving water resource planning and management initiatives through the United States”

He also referred to a 2014 National Weather Service report, noting that “55 deaths and \$2.86 billion in property losses as a result of flooding in the United States” were reported that year. The Petitioner maintains that by developing hydrological models that accurately predict flooding and other hydrometeorological extremes, he can help reduce the socioeconomic burden associated with flooding. The Petitioner also submitted several reference letters which show that his proposed research has and will continue to benefit the broader scientific community by adding to the knowledge of predictive hydrology and water resource planning and management. As such, we conclude that he has established the national importance of his 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 civil engineering, which has provided him with the necessary education to advance his proposed endeavor. He also submitted copies of his peer-reviewed papers, numerous cited articles published in top scientific journals, many of which list him as first-author, evidence relating to other researchers' citations to these papers and articles, and evidence of his service as a peer reviewer for scholarly publications in his field. In addition, the Petitioner offered documentation of a funding grant received and numerous reference letters from engineering professionals and researchers that explain how the Petitioner has advanced the field's knowledge in predictive hydrology.

Multiple expert references identify examples of how the Beneficiary's work has been utilized in the field of predictive hydrology or has otherwise affected the hydrology and water resource management field. For example, [REDACTED], Senior Water Resources Engineer for [REDACTED], describes the Petitioner's work on a Risk-Informed Decision Making (RIDM) framework for hydropower reservoirs, noting that the framework serves "as a resource for operational planners to use in responding to flooding and high inflow events. [REDACTED], Senior Geospatial Data Scientist for [REDACTED], also describes the Petitioner's research on the development of a new "fuzzy multi-criteria decision-making framework," which assists decision-makers in making determinations regarding water resources projects. He notes that other researchers applied the Petitioner's work on parametric forms of fuzzy numbers research, citing to a 2012 example of the use of his framework in emergency management of water blooms. Professor [REDACTED], quoted above regarding the need for accurate characterization of river flow regimes, notes that a team from [REDACTED] of Life Sciences relied on the Petitioner's methodology in this area in concluding that dams have a significant impact on downstream river flow regime.

In addition, the record includes evidence from Google Scholar showing the number of citations to the Petitioner's published work, consisting of at least 13 publications, as well as partial copies of some of the articles in which those citations appear. This evidence shows that his research has been frequently referenced by other researchers with whom he has not collaborated, and serves to support the statements from the above letters and others in the record regarding his record of success in advancing his endeavor. It thus helps to demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The record also includes additional detailed expert letters describing U.S. Government interest and investment in the Beneficiary's research, and documentation showing that he played a significant role in a project funded by a grant from the [REDACTED], a division of the [REDACTED]. Specifically, the record demonstrates that the Petitioner developed a novel computational approach to modeling and prediction of wind-generated wave heights critical to wave prediction and coastline restoration projects.

The Petitioner's experience and expertise in the field of civil engineering, the record of his published work and its influence on the work of others in his field, his progress in advancing predictive hydrology modeling as well as government interest and funding of his research position him well to advance his proposed endeavor. Accordingly, we disagree with the Director and find that he 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 in hydrology and water resource management has the potential to provide widespread benefits to the United States in terms of generating hydropower, mitigating water scarcity, and reducing the socioeconomic toll of floods and droughts, and that his education, experience, and record of success in these endeavors position him well to advance them. In addition, the Petitioner has his past successes in advancing research relating to hydrology and water resource management. Based on his track record of successful research and the significance of his proposed work to advance U.S. hydrology interests, we therefore find that he 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 he qualifies as a member of the professions holding an advanced degree, and that he meets the three prongs of the *Dhanasar* framework. We find that he is eligible for, and otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.