



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

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

MATTER OF E-A-A-

DATE: DEC. 27, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner 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 USCIS's Nebraska Service Center denied the petition. The Director found 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 a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner contends that he is eligible for a national interest waiver based on his work developing guidelines to improve physicians' ability to determine the correct prognoses and treatments for individuals with cancer. The Petitioner maintains that the Director did not properly consider his past record of achievement.

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. . . . the 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.<sup>1</sup> *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

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.

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<sup>1</sup> 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) (*NYS DOT*).

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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.<sup>2</sup>

## II. ANALYSIS

The Petitioner received a medical degree from [REDACTED] in 2010 and a master of science degree from [REDACTED] in 2015. Accordingly, the Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

At the time of filing the petition, the Petitioner indicated he was employed as an instructor at the [REDACTED] in addition to holding a two-year position as a clinical scholar in residence for the [REDACTED] and the [REDACTED]. The record reflects that the Petitioner has focused his research on "cancer staging and developing survival prognostic calculators for various types of cancer." He indicates his intent to pursue a surgical oncology fellowship and writes that he wishes to continue his work collaborating with statisticians and data analysts to "analyze large databases" to develop guidelines about "treatment sequencing" and types of therapies to administer to patients with different types of cancer.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner states that he intends to continue clinical practice and research, concentrating on cancer outcome research. He anticipates "working closely with tumor boards and cancer registrars" to improve the quality of cancer registry data. He writes that his "ultimate goal" is to "work at an academic institution in the department of surgery where I will combine my clinical and research expertise to help improve the care of patients with cancer." The Petitioner provided letters from colleagues and professors discussing the critical need for advancements in cancer surveillance and the use of cancer registry data in the staging of adult and pediatric solid malignancy. He also submitted research reports from the American Cancer Society outlining the death rates from individual cancers and explaining the cancer staging process. We find that the Petitioner's proposed research and clinical work has

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

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substantial merit because it aims to improve cancer staging data, treatment protocols, and ultimately, outcomes for patients with cancer.

The record also demonstrates that the Petitioner's proposed endeavor is of national importance. The Petitioner submitted expert letters from professors working in the field of cancer staging, along with members of the [REDACTED] discussing how clinicians and researchers rely upon comprehensive evidence-based anatomic staging data as the critical factor to understanding cancer and treating patients. In addition, the Petitioner submitted research from the National Cancer Society reporting cancer diagnoses, treatment, and death rates along with the formidable cost of the disease to individuals and the economy as a whole.

#### B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted his résumé, documentation of his published and presented work, peer review activities, medical training credentials, along with reference letters discussing his work in the field, and evidencing his leadership in developing cancer staging tools. The record also includes evidence that the Petitioner is being recruited for fellowship positions at several leading hospitals including [REDACTED] and [REDACTED]. As discussed below, we find that the Petitioner's notable experience on high-profile projects in this area and his past success in performing influential original research render him well positioned to advance the proposed endeavor.

For example, [REDACTED] medical director, [REDACTED] and executive director of [REDACTED] notes that the Petitioner is "playing a vital role in the production of the [REDACTED] of the [REDACTED] which defines the classifications used to assess a cancer's severity and is scheduled for publication in late 2016. The Petitioner was selected as the first [REDACTED] clinical scholar in residence tasked with defining and updating the cancer staging systems in the [REDACTED] of the manual. It is utilized by clinicians throughout the country to enhance physicians' abilities "to make accurate prognoses for patients with cancer by integrating multiple pertinent factors, such as the type of cancer, the patient's age and gender, the type of treatment received, and characteristics of the cancer such as histology and size." [REDACTED] chair, Department of Surgery, [REDACTED] describes the manual as the "gold standard" reference for cancer staging, used by surgical, medical, and radiation oncologists. He states that it is "crucial to the development of a patient's personalized treatment program to have uniform, evidenced-based criteria." [REDACTED] professor, [REDACTED] agrees that the Petitioner's contributions to the publication of the [REDACTED] are "vital and necessary," and "will have far-reaching implications for cancer care in the United States for decades to come." The Editor-in-Chief of the manual, [REDACTED] professor, chairman and medical director, [REDACTED] writes:

[The Petitioner's] prior knowledge of cancer staging, as well as his clinical background and work in cancer surveillance allowed him to engage fully with the information architects we consulted with to critically review the current cancer staging system and offer us critical lessons for adapting the cancer staging system to the modern era.

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[The Petitioner] has come to understand the vision of the [REDACTED] and has been collaborating with members of the expert panels convened for the [REDACTED] staging system to ensure that our vision of a comprehensive, relevant and user-friendly staging system is realized.

Additionally commending the Petitioner's work on the [REDACTED] manager of the [REDACTED] states that the Petitioner provided "indispensable clinical insight as a subject matter expert," and that his opinion is "often solicited from some of the most accomplished oncologists in the world."

[REDACTED] medical director of cancer data services, [REDACTED] indicates that the Petitioner has also contributed significantly to the primary cancer registry in the United States, the [REDACTED] writes that the Petitioner's work "has allowed for the development of quality benchmarks in cancer care now used by the [REDACTED] and the [REDACTED]. He further explains that "[the Petitioner's] knowledge base and experience are possessed by very few and make him extremely valuable to the medical community in the U.S."

The Petitioner has also held a leadership role in the revision of the [REDACTED] manual, which is the standard in the United States by which cancer registrars code all cancer cases and collect data entered into the [REDACTED] serves as the chair for this project and describes how the Petitioner's "training as a physician, expertise in cancer staging and [REDACTED] make him "invaluable to this endeavor." He comments that the Petitioner has been "instrumental" to the project and that he is the "lead author of an article outlining the fundamentals of this revision that was published in the journal *Cancer*, in 2015."

Finally, several experts attest to the positive impact of the Petitioner's work proposing a new staging system for adrenocortical carcinoma which was published in the peer-reviewed journal, [REDACTED]. In this project, the Petitioner assimilated the largest dataset to date on patients with adrenocortical carcinoma, which the record reflects is being used by clinicians in the field. For example, [REDACTED] clinical professor of surgery, [REDACTED] writes that the Petitioner's work in this area has been "informative to my clinical practice." He comments that due to the Petitioner's work on staging adrenocortical carcinoma, he can "confidently counsel my patients with adrenocortical carcinoma about their prognosis," and "estimate how long patients with adrenocortical carcinoma may live and therefore decide whether to pursue aggressive treatment or palliative care."

Thus, the significance of the Petitioner's research in his field is corroborated by evidence that physicians are modifying their treatment approaches based upon his research and publications. We find that the Petitioner's education, experience, and expertise in his field the significance of his role in research projects, as well as his leadership in developing cancer staging tools, position him well to continue to advance his proposed endeavor of cancer staging research.

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

Third and finally, we conclude 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 noted above, the Petitioner holds a medical degree and a master of science degree in health services and outcomes research, along with considerable experience and expertise in the highly specialized field of cancer staging. The evidence also shows that comprehensive evidence-based anatomic staging data is a critical factor to understanding cancer and treating patients. The Petitioner has documented his past success advancing high-profile projects such as spearheading the revisions of the [REDACTED] of the [REDACTED] and leading the revisions of the [REDACTED] and the primary cancer registry in the United States, the [REDACTED] Experts in the field consistently applauded the Petitioner's contributions as critical to the "development of quality benchmarks in cancer care," and testified to their use of the Petitioner's work in their own clinical practice and research. For these reasons, we find the Petitioner has established that the United States will benefit from his contributions even assuming that other qualified U.S. workers were available to perform these critical functions. Therefore, we conclude 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.

### III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established eligibility for and otherwise merits a national interest waiver as a matter of discretion. Accordingly, the Petitioner has met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is sustained.

Cite as *Matter of E-A-A-*, ID# 77902 (AAO Dec. 27, 2016)