



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

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

MATTER OF K-A-

DATE: DEC. 27, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a biostatistician, 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 Texas 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 she 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 her appeal, the Petitioner argues that she is eligible for a national interest waiver based on the impact of her work on national and international health guidelines.

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 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.

The Petitioner works as a biostatistician at the [REDACTED] at [REDACTED]. She is responsible for collaborating in the design, implementation, and analysis of national and international AIDS and human immunodeficiency virus (HIV) clinical trials. As a [REDACTED] statistician, the Petitioner's work supports the [REDACTED] a large multi-center pediatric and perinatal HIV/AIDS clinical trials network funded by the [REDACTED].<sup>3</sup>

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

The Petitioner proposes to continue her "role in the [REDACTED] clinical trials network, ensuring rigorous study design and implementation, as well as analysis of data from that network's ground breaking research concerning pediatric HIV infection." Specifically, she intends to continue working "on [REDACTED] highest priority protocol, [REDACTED] a \$140,000,000 study designed to minimize mother-to-child transmission of HIV." The Petitioner provided letters from colleagues and information from the websites of the [REDACTED] and the [REDACTED] that discuss the benefits of the [REDACTED] study and its effort to identify the best approach for preventing mother-to-child transmission of HIV. We find that the Petitioner's proposed work, which offers biostatistical research and support for studies related to the treatment and management of young people afflicted with HIV, has substantial merit.

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

<sup>3</sup> [REDACTED] receives funding from the [REDACTED] and the [REDACTED] the [REDACTED]

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The record also demonstrates that the Petitioner's proposed endeavor is of national importance. The Petitioner submitted probative letters from experts in the field that describe the importance of her proposed work to ensure that the results of the [REDACTED] HIV/AIDS studies are accurate and that the interpretation of those results is valid. In addition, she provided evidence showing that biostatistical research for HIV/AIDS studies has national and international implications, as the results from such work are disseminated to others in the field through medical conferences and journals. The record also included information from the [REDACTED] and the [REDACTED] websites indicating the international scale of the [REDACTED] study and its impact on the medical field. The expert letters and information from the [REDACTED] and the [REDACTED] websites show the importance of the proposed biostatistics research both nationally and internationally, and that work to identify better treatments for HIV/AIDS is a U.S. national priority.

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

The Petitioner submitted numerous reference letters describing her expertise and record of success in her past work in the biostatistics field. As discussed above, the Petitioner's work supports the [REDACTED] clinical trials network. The record, including letters from colleagues and copies of her published and presented work, reflects that she has consistently played a critical role in the design and implementation of these research studies, which were funded by government agencies such as the [REDACTED] the [REDACTED] and the [REDACTED]

For example, [REDACTED] a principal research scientist in the Department of Biostatistics at [REDACTED] noted that the Petitioner "plays a key role in the [REDACTED] clinical trials network, ensuring rigorous study design and implementation, as well as analysis of data from that network's groundbreaking research concerning pediatric HIV infection." [REDACTED] further stated: "In the past three years, [the Petitioner] has made major contributions in all phases of the [REDACTED] protocol, including study design and implementation, as well as analyses needed to monitor patient safety. This protocol has the most intricate design of any study conducted by the [REDACTED] network." In addition, [REDACTED] mentioned that the Petitioner's "work on [REDACTED] studies has lead [*sic*] to numerous scientific presentations, and she has co-authored a number of peer-reviewed manuscripts." In support of [REDACTED] statement, the Petitioner provided documentary evidence showing her authorship of journal articles and conference presentations.

[REDACTED] is a medical officer in the [REDACTED]. She indicated that the Petitioner "is an unusually talented biostatistician working on AIDS clinical research, an area of obvious importance to the health of our nation." Furthermore, [REDACTED] emphasized the Petitioner's critical role in the [REDACTED] study stating: "Should [the Petitioner] be required to leave the United States, this would be a tremendous loss to our study and severely impair its progress." [REDACTED] further stated:

[The Petitioner] is in the midst of the analyses for the [REDACTED] study, which will require several more years of work. Her unique contributions to this study are invaluable. She ensures the participants' safety and the smooth conduct of the study by

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extensive regular monitoring. In addition, she is taking the lead to regular and time-critical interim analyses to see if there is any evidence of efficacy so that decisions can be made quickly and efficiently about the potential utility of treatments.

\_\_\_\_\_ a professor of psychiatry in the Department of Psychiatry and Behavioral Science at \_\_\_\_\_ indicated that he has collaborated with the Petitioner on several \_\_\_\_\_ projects, including a study they coauthored regarding the “emergence of mental health disorders in youth perinatally infected with HIV and peer comparisons.” \_\_\_\_\_ stated that the Petitioner completed the data analysis and played “a crucial part in writing and revising the final manuscript” leading to their publication of the article in \_\_\_\_\_ . \_\_\_\_\_ The record includes citation evidence from \_\_\_\_\_ showing that their article has been frequently cited by independent researchers. A substantial number of favorable independent citations for an article is an indication that other researchers are familiar with the work and may have been influenced by it. Such evidence helps show a past record of achievement that demonstrates the Petitioner is well positioned to advance HIV/AIDS research.

\_\_\_\_\_ professor of pediatrics and associate dean for research at \_\_\_\_\_ stated that she worked with the Petitioner on a study entitled “\_\_\_\_\_” \_\_\_\_\_ described the study as “the first of its kind for the \_\_\_\_\_ funded \_\_\_\_\_ network” and indicated that their findings have “made major contributions to the way we think about our aging up perinatally HIV infected youth.” In addition, \_\_\_\_\_ mentioned that the Petitioner “has taken the lead in the statistical analysis of numerous projects,” presented her work at multiple international medical conferences, and contributed to studies that have “made a huge impact on our ability to treat and manage young people with HIV.”

\_\_\_\_\_ director of the \_\_\_\_\_ at \_\_\_\_\_ noted that the Petitioner “is a key biostatistician in HIV/AIDS research and has made significant contributions to our efforts in this high priority field.” Similarly, \_\_\_\_\_ director of the \_\_\_\_\_ at \_\_\_\_\_ explained that the Petitioner’s work has contributed “to the development of better treatment strategies for HIV/AIDS” in the United States and internationally.

In addition to her work on HIV/AIDS, the record reflects that the Petitioner has done influential biostatistics work on other projects. For instance, \_\_\_\_\_ an associate professor of medicine at \_\_\_\_\_ described his collaboration with the Petitioner on a study to prove the efficacy of inhibiting an enzyme that is critical for cancer metabolism in kidney cancer cells to prevent their growth. \_\_\_\_\_ stated that the Petitioner designed the experiment, provided guidelines regarding the number of test subjects, and conducted the analysis of the results. He further noted that the results of the study were published in \_\_\_\_\_ that the research findings “ignited the interest of the pharmaceutical industry,” and that a biotechnology company has now developed a drug that inhibits the enzyme. In addition, \_\_\_\_\_ indicated that the Petitioner was “the leader in creating the clinical database” for the \_\_\_\_\_ “a reference center for the genetic evaluation of people with kidney cancer in the Northeast area of the U.S.”

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As detailed above, the significance of the Petitioner's past projects in the field is corroborated by documentation of peer and government praise for her work. In addition, she offered citation evidence for her published articles indicating that her findings have affected the work of others in the field. The Petitioner's experience and expertise in her field, published and presented work, record of success contributing to various medical studies, progress in the area of HIV/AIDS research, and significant role for [REDACTED] projects such as the [REDACTED] protocol position her well to advance her proposed endeavor.

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

As a biostatistician, the Petitioner possesses considerable experience and expertise in collaborating in the design, implementation, and analysis of national and international AIDS and HIV clinical trials for [REDACTED]. The record also demonstrates the widespread health benefits presented by research studies that offer ways to more effectively treat HIV/AIDS. The Petitioner has documented her past successes advancing [REDACTED] studies and providing influential research findings. For instance, [REDACTED] indicated that the Petitioner "has been intensely involved in the development of the [REDACTED] protocols and has made major contributions to all aspects of the development, implementation, review, and approval of the [REDACTED] study and its key resources." In addition, the repeated funding of research studies in which the Petitioner has played a key role indicates that federal agencies within the [REDACTED] have found her work on those projects to be promising and useful. Based on the Petitioner's track record of successful research and the significance of her ongoing role in a project that advances U.S. 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.

### III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that she has established eligibility for and otherwise merits a national interest waiver as a matter of discretion. Accordingly, the Petitioner has met her 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 K-A-*, ID# 77437 (AAO Dec. 27, 2016)