



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

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

MATTER OF E-J-C-D-H-

DATE: SEPT. 19, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an agribusiness entrepreneur, seeks second preference immigrant classification as an individual of exceptional ability, 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 a 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 did not qualify for classification as an individual of exceptional ability, and that he 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 contends that he meets three of the six exceptional ability criteria and that he 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.

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 the sciences, arts, or business.” In order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Additionally, 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.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when a petitioner satisfies the three prongs set forth in its analytical framework.

## II. ANALYSIS

### A. Exceptional Ability

As an agribusiness entrepreneur, the Petitioner invents and manufactures crop biostimulants that are then sold by agrochemical distributors. He asserts that he meets three of the exceptional ability evidentiary criteria: 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F). The Director determined that the Petitioner’s advanced vocational diploma from the [REDACTED] satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of “a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.” In addition, the Director found that the Petitioner presented letters from employers showing that he “has at least ten years of full-time experience” in his occupation and therefore he satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). The record supports the Director’s findings relating to these two criteria.

On appeal, the Petitioner maintains that he also meets the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) which requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.” For the reasons discussed below, the record supports a finding that the Petitioner satisfies this third criterion.

As evidence of the recognition of his achievements and significant contributions to the industry, the Petitioner provided letters from agricultural distributors, citrus growers, and the director of the [REDACTED]. These letters from experts in the field offer specific examples of the widespread utilization of the Petitioner’s crop biostimulant products and their contribution to sustainable agriculture. For example, [REDACTED] president of the [REDACTED] indicates that his organization is using the Petitioner’s [REDACTED] product to treat over 2,300 acres. He further states: “As a result of utilizing [the Petitioner’s] products on our crop, we are able to use fewer synthetic chemicals and the vigor of our trees has improved and our production has increased.” In addition, the record includes purchase orders, invoices, and sales data to corroborate the information provided in the aforementioned letters of support about the widespread utilization of the Petitioner’s products. The Petitioner also presented agronomic study test results from an independent organization showing the efficacy his biostimulant products and an article in *Florida Grower* discussing the effectiveness of his [REDACTED] product.

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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) (*NYSDOT*).

We find the above evidence sufficient to document that the Petitioner's achievements and significant contributions to the industry through his development effective biostimulant products have been recognized by peers, governmental entities, or professional or business organizations. Accordingly, he meets the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), and the Director's finding on this issue is withdrawn. The record adequately demonstrates that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification.

## B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest.

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

Through his company, [REDACTED] the Petitioner proposes to continue developing and manufacturing liquid natural biostimulants derived from marine algae. He asserts that his "unique, all-natural, crop protection products" provide economic benefits to the U.S. agriculture industry, create a healthier and sustainable agricultural environment, and offer consumers access to fruits and vegetables that are free of pesticides. As one example of the potential benefits of his proposed endeavor, the Petitioner explains that his biostimulants are aimed at helping infected trees survive Huanglongbing (HLB), a bacterial citrus greening disease that is a serious threat to citrus crops in Florida.

The record includes various news articles discussing HLB and its adverse effects on the Florida Citrus industry. For instance, a May 2013 article in the *New York Times*, entitled [REDACTED] indicates that the disease is the Florida citrus industry's "most serious threat in its history" and "has infected all 32 of the state's citrus-growing counties." This article further notes that a report from the [REDACTED] "concluded that between 2006 and 2012, citrus greening cost Florida's economy \$4.5 billion and 8,000 jobs." In addition, an October 2016 *CBS News* article entitled [REDACTED] states: "Florida's nearly \$11 billion citrus industry faces a growing danger from disease. A tree-killing bacteria is wiping out the state's famous orange groves. Ninety percent are infected, and next year's orange harvest could be one of the lowest on record." We find that the Petitioner's proposed development of natural products that improve plant health for fruit and vegetable crops has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In addition to multiple news articles highlighting the urgency of protecting citrus groves from HLB disease, the record includes letters of support discussing the potential benefits of his all-natural biostimulant development work and its broader implications in the industry. For instance, [REDACTED] vice president of crop protection products at [REDACTED] asserts that the Petitioner "is continually developing, testing and creating

new products for use within the agricultural industry.” [REDACTED] further explains that the Petitioner’s products are environmentally friendly, improve crop yields and plant health, do not expose farm workers to chemical irritants, and allow consumers access to crops that are free of pesticides. Furthermore, [REDACTED], president of [REDACTED] discusses the value of the Petitioner’s proposed work to the crop protection industry, stating: “[The Petitioner’s] continued research and product manufacturing in agribusiness will undoubtedly help in creating more natural crop protection products which is better than the chemical pesticides that are frequently used today – it is better for our environment, farm workers, and end consumers.”

The aforementioned evidence is sufficient to demonstrate that the potential prospective impact of the Petitioner’s proposed biostimulant development work offers advancements in sustainable agriculture and the crop protection industry. As the Petitioner has documented both the substantial merit and national importance of his proposed endeavor, we find that he meets the first prong of the *Dhanasar* framework.

## 2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his résumé, advanced vocational diploma, a provisional U.S. patent application, three registered U.S. trademarks, media coverage and advertising relating to his products, and documentation of his company’s business plan and operations.<sup>2</sup> In addition, the Petitioner offered reference letters describing his expertise as an agribusiness entrepreneur and his past record of success in developing effective crop biostimulants.

We find that the Petitioner’s past experience renders him well positioned to advance his proposed endeavor. Multiple experts discuss the widespread utilization of the Petitioner’s crop biostimulant product, [REDACTED] and its effectiveness in improving plant health and increasing crop yield. For example, with respect to improving citrus tree resistance to HLB disease, [REDACTED] director of the [REDACTED] states: “[The Petitioner’s] product has proven effective for mature trees as well as those newly planted and found as nursery stock. This product has been used throughout the industry and the results have been verified by each and every participating grower.” Further, as previously noted, [REDACTED] states that the [REDACTED] is using [REDACTED] on 2,300 acres and he further indicates that the product “is helping us maintain and improve our fruit yields, while also helping our trees gain resistance to HLB.”

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<sup>2</sup> The Petitioner’s business plan for [REDACTED] includes a company description, market analysis, organizational chart, employment and financial projections, discussion of product lines, and sales and marketing information. In addition, the record includes evidence demonstrating that this small business is currently in existence and that it operates as a wholesaler of the agricultural products the Petitioner has developed. This documentation includes U.S. income tax returns, financial statements, purchase orders, invoices, and sales data.

Similarly, [redacted] production manager at [redacted], asserts that his company “has been utilizing [the Petitioner’s] invention, [redacted] since 2013.”<sup>3</sup> He explains that when [redacted] first utilized this product, his company had “lost approximately 50% of our fruit production from our roughly 5,000 acres or 1 million trees” due to HLB disease. In addition, [redacted] states: “Our crops showed a strong and an immediate positive response with [redacted]. Specifically, HLB infected trees that were treated with [redacted] were producing larger fruit size than HLB infected trees that were not treated. . . . [W]e also noted that [redacted] was also reviving the declined canopy of our sick trees.” Based on these results, [redacted] indicates that [redacted] is now “using [redacted] on all our 4,000 dedicated citrus acres” and that his company has restored its “pack out ratio and yield ratio to nearly 450 boxes per acre.”

The record also includes letters of support from agrochemical distributors that sell the Petitioner’s crop biostimulants to growers. For instance, [redacted] states that [redacted] has been selling [redacted] “on a large-scale basis and it is easily one of our top sold/demanded crop protection products” and that sales in the first ten months of 2016 have exceeded “32,000 liters.” In addition, [redacted] an agronomic crop consultant and area manager for [redacted] indicates that his company has been “selling [the Petitioner’s] products to our clients – ranchers and farmers in the Southeastern States – for over three years now.” [redacted] further notes that [redacted] “is being sold to several hundred of our customers” and that demand has been high due to results such as “better quality fruit, a better yield of fruit and resistance to HLB.” The Petitioner offers purchase orders, invoices, and sales data to corroborate the information provided in the aforementioned agrochemical distributors’ letters. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed biostimulant development work in the United States.

The Petitioner’s experience and expertise in his field, his record of success in developing biostimulant products, the significant interest in his products from customers and relevant parties, and his progress in helping to protect citrus groves from HLB disease position him well to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

### 3. 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. Here, the record establishes that, as an agribusiness entrepreneur, the Petitioner possesses considerable experience and expertise in developing and manufacturing crop biostimulant products. The Petitioner notes that, as he is self-employed, it would be impractical for him to obtain a labor certification. The record also demonstrates the widespread benefits associated with his development of natural products that improve plant health for fruit and vegetable crops. In addition, the Petitioner has documented his past successes in developing effective biostimulant products and progress in helping to protect citrus groves from HLB disease. Based on the Petitioner’s track record

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<sup>3</sup> He states that [redacted] is “one of the largest citrus growers in Florida with over 4,000 acres . . . dedicated to citrus production.”

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of successful product development and the significance of his proposed work to advance U.S. agricultural interests in the crop protection industry, we find that he 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 established eligibility for EB-2 classification as an individual of exceptional ability. Furthermore, he has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that the Petitioner has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.

Cite as *Matter of E-J-C-D-H-*, ID# 1519291 (AAO Sept. 19, 2018)