



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

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

In Re: 15470910

Date: JUNE 30, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physician, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but 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.

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 dismiss 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 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,¹ 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, regarding 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

¹ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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.²

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ Therefore, we need not consider the alternative claim of exceptional ability in the sciences, arts, or business. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner practiced medicine in Brazil from 2009 to 2017, also briefly serving as a professor at a medical school in 2016. After traveling to Canada, the Petitioner entered the United States in 2018 as the spouse of an F-1 nonimmigrant student. Although the Petitioner's past employment was as a physician specializing in [redacted] he specifies on the petition form that he seeks employment as a "medical scientist" who will "[c]onduct research dealing with the understanding of human diseases and the improvement of human health." As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

The Director concluded that the Petitioner met the first prong of the *Dhanasar* framework, relating to substantial merit and national importance. We need not revisit this conclusion here. The Director also concluded that the Petitioner did not satisfy the second or third prongs.

As explained below, we agree with the Director's conclusion that the Petitioner did not establish that he is well positioned to advance the proposed endeavor.

The Petitioner states that he:

intends to advance his career as a Medical Scientist in [redacted] by conducting research and engaging in clinical investigations to better understand and treat disease to improve overall human health, medicine and healthcare and also by identifying any opportunities for business to use the extensive research to support the U.S. healthcare sector and the national interest.

The Petitioner claims no prior experience as a medical scientist who conducts research. Rather, he "has worked as a Physician and [redacted] for large hospitals as well as a Teacher of Medicine in Brazil," and asserts: "Based on his extensive experience in the medical field [he] is well positioned to advance his proposed endeavor to work as a Medical Scientist in [redacted]"

The Petitioner's "Professional Plan & Statement" describes his experience as a practitioner but does not explain how this experience would translate into medical research. He asserts:

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

³ The Petitioner earned a medical degree from [redacted] University [redacted], Brazil, in 2006.

I will be able to:

- Perform research for the prevention and treatment of human disease, especially [redacted] health;
- Develop treatments and medicine to improve human health;
- Conduct and design clinical studies, prepare and analyze medical samples and data;
- Write technical reports on research findings;
- Create, test and standardize medicine, medical devices and equipment;
- Coordinate quality care services and ensure patient safety and legal compliance;
- Negotiate medicinal and healthcare costs to increase revenue and reduce losses;
- Train, guide, and supervise aspiring medical and health services professionals;
- Promote public health management, organization, operations and control of practices related to all aspects of medical care; and
- Create American jobs and generate U.S. tax revenue.

The above list appears to be an aggregation of tasks from a variety of occupations, rather than responsibilities specific to medical research. For instance, the Petitioner has not identified any one specific occupation that entails both negotiating health care costs and creating medical devices. More importantly, the Petitioner does not explain how his background has well positioned him to perform those tasks.

A separate introductory statement includes a rather different list:

As a Medical Scientist . . . he will be able to:

- Improve medical [redacted] research, quality assurance, regulatory compliance and medical technology;
- Conduct medical research and lead teams of scientists and medical technicians in this endeavor to contribute to advances in medical research, medicine, and medical technology in [redacted];
- Design and implement clinical trials, draft study synopses, methodologies, collect and analyze data, publish and present significant findings and publish research to advance public health, in diagnosing, treating, and curing disease;
- Draft research grants, seek funding and form collaborations with medical companies, organizations and institutions; and
- Edit, publish and present scientific publications and present medical research at scientific conferences and consortiums.

The Petitioner does not cite any evidence that he has any prior experience in any of the listed areas. Medical *practice* and medical *research* are related but distinct fields of endeavor, and experience in one of those fields does not convey or imply expertise in the other. The Petitioner articulates no specific plans about his intended research, relying instead on general information about such research.

The Petitioner states that “several other professionals . . . have written testimonial letters that attest to [the Petitioner’s] unique expertise.” These letters, and the Petitioner’s own résumé, do not indicate

that the Petitioner has any prior experience in medical research. The writers of the letters attest to the Petitioner's skill as a physician, and describe his experience in varying degrees of detail, but they show no awareness of the Petitioner's plans to pursue research rather than medical practice.

In a request for evidence, the Director informed the Petitioner that the initial submission does not establish that the Petitioner is well positioned to work as a medical researcher. We note that, in this notice, the Director did not instruct the Petitioner to change his proposed endeavor or indicate that any such change would be accepted.

In response, the Petitioner has submitted a new "Professional Plan & Statement," outlining a proposed endeavor very different from the medical research described initially. In his revised plan, the Petitioner states that he will practice medicine, "focusing on Emergency Medicine, Intensive Care Medicine, Clinical Medicine, and [redacted] in particular." The Petitioner also asserts that he is pursuing board certification and has begun taking the required examinations to qualify for licensure in the United States. The Petitioner does not mention his previous plan to engage in medical research or explain why he apparently abandoned that plan.

The Petitioner's response also includes email printouts showing that in April 2020, ten months after he filed the petition, he inquired about various employment opportunities with various medical practices, hospitals, and staffing agencies.

In denying the petition, the Director determined that letters attesting to the Petitioner's abilities as a [redacted] "do not establish . . . a record of success as a researcher," and that the Petitioner had not shown "any plans, progress, financial support or other . . . commitments to drive the endeavor forward." The Director also noted that the evidence regarding the Petitioner's plan to practice medicine in the United States dates from after the petition's June 2019 filing date.

On appeal, the Petitioner asserts that the Director erred because the Petitioner is, by virtue of his "exceptional and diverse expertise," well positioned to advance the proposed endeavor. The appellate brief does not discuss the proposed endeavor in much detail or acknowledge the submission of two quite different proposed endeavors.

At the time of filing, the Petitioner's proposed endeavor focused on medical research, an area in which the Petitioner does not appear to have any experience or specialized training. We conclude that the Petitioner is not well positioned to advance the proposed endeavor described in the initial filing.

The second version of the proposed endeavor was not part of the initial filing. The Petitioner must meet eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1). Furthermore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Here, the substitution of the Petitioner's proposed endeavor was not merely a minor revision to add clarity or detail. Rather, it represents a major material change, from one occupation (medical researcher) to another (physician).⁴

⁴ To accept this alteration would be to consider the initial filing as a mere placeholder, securing a priority date before the Petitioner makes a final decision about his proposed endeavor.

For the above reasons, the Petitioner has not established that he is well positioned to advance the proposed endeavor as described in the initial filing of the petition.

In light of the above conclusions, detailed discussion of the third *Dhanasar* prong cannot change the outcome of this appeal. Therefore, we reserve this issue.⁵

III. CONCLUSION

Because the Petitioner has not met the required second prong of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Although we reserve the issue, we briefly note that the Petitioner's third prong arguments rely heavily on information regarding a shortage of U.S. physicians (even in the initial submission, when the Petitioner did not yet claim that he seeks to practice medicine in the United States). Section 203(b)(2)(B)(ii) of the Act provides for shortage-based waivers under certain conditions, and the regulations at 8 C.F.R. § 204.12 outline the process by which a physician can qualify for the waiver based on such a shortage. Here, however, the Petitioner has not followed that process or attempted to meet the requirements specified therein. The Petitioner cannot sidestep these statutory and regulatory requirements and, instead, seek a shortage-based waiver under the *Dhanasar* framework. *Dhanasar* does not provide for shortage-based waivers, because the labor certification process is the means by which the Department of Labor confirms the unavailability of qualified U.S. workers. Information that would tend to favor approval of a labor certification does not make that labor certification moot.