



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

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

In Re: 25051398

Date: FEB. 9, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an electrical 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. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that 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. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

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).

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar*'s three-prong analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that although the Petitioner established the substantial merit of his proposed endeavor, he did not show its national importance.

In his initial statement, the Petitioner indicated:

My proposed endeavor is to build on robust and reliable MEMS [microelectromechanical systems] switches through investigating novel contact materials, contact geometries, and actuators using my extensive experience with device physics, modeling and simulation, micro-device fabrication, electrical and mechanical characterization, and advanced optical and electron microscopy in order to facilitate the next generation of wireless communication technology, such as 5G and Internet of Things (IOT) applications

In response to the Director's request for evidence (RFE), the Petitioner further explained:

My proposed endeavor is to explore novel contact materials and develop micro-device fabrication methods to facilitate the next generation of wireless communication technology, including 5G/6G and [IOT]. Specifically, I will work to improve the semiconductor microchip design, modeling and manufacturing of a [MEMS] switch by building a novel microchip testing system to facilitate the data collection needed to design a reliable and robust MEMS switch. This technology will be useful not only for 5G/6G and IOT applications, but for use in aerospace and defense contexts as well.

A MEMS switch is a tiny semiconductor microchip and it is the heart of any microsystem. It performs the most sophisticated switching and sensing functions in all wireless devices, including cell phones, automobiles, satellites, and aerospace vehicles. However, reliability and performance are prime concerns in enabling these switches to be ubiquitously commercialized by the industry. In a MEMS switch, micro-actuators and microcontact materials play a critical role in determining reliability and performance. I have built a semiconductor microchip testing system to investigate the reliability and performance associated with a MEMS switch. I plan to investigate the design, modeling, manufacturing and testing of micro-actuators, contact materials, contact geometries and their manufacturing methods using my custom-built testing system. I plan to collect data to study and analyze for designing and manufacturing a future robust and reliable MEMS switch for next-generation wireless technology

applications such as 5G/6G and IOT applications, as well as for satellite, aerospace, and defense applications

In support of his proposed endeavor, the Petitioner provided various articles discussing MEMS, IOT, 5G, microchip technology, microsystems, and semiconductors. Considering the totality of the evidence, the Petitioner has sufficiently shown the substantial merit and national importance of his proposed endeavor, consistent with the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner in order to determine whether the individual is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record contains his curriculum vitae, educational credentials, an employment letter, reference letters, journal articles and conference papers, citatory evidence, funding documentation, and peer review activity. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

As a preliminary matter, the Petitioner points out that he has an advanced degree in a Science, Technology, Engineering, and Mathematics [STEM] field and references the *USCIS Policy Manual*. USCIS considers an advanced degree, particularly a Ph.D. in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong. *See 6 USCIS Policy Manual F.5(D)(2)*, <https://www.uscis.gov/policymanual>. However, a degree in and of itself is not a basis to determine that a person is well positioned to advance the proposed endeavor. *Id.* Although the Petitioner's master's degree in engineering is an especially positive factor, the totality of the evidence in the record, as discussed below, does not show that he is well positioned to advance his proposed endeavor. Furthermore, in *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.²

Further, the Petitioner indicates that he provided an employment letter from [redacted] University [redacted] reflecting that he occupies a research position as a Ph.D. student, and the university intends to hire him as a post-doctoral fellow once he completes his degree. The Petitioner, however, did not show how his current, temporary job and prospective, contingent position well situates himself to advance his proposed endeavor.

The record contains additional recommendation letters referencing the Petitioner's graduate research. Overall, the letters provide descriptions of the Petitioner's various research projects; however, in further

² According to his curriculum vitae, the Petitioner claims to have earned master of science and bachelor of science degrees from the University of [redacted]; however, the record only contains evidence of his master of engineering degree from the University of [redacted]

explaining the implementation or impact of his work, the letters generally point to other papers that cited to his research in their own written work. The letters do not further elaborate and sufficiently explain how the Petitioner's work has been utilized in the field or otherwise constitutes a record or success beyond having been cited by others in their published works. Moreover, the lack of specificity in the letters do not show how his work has affected the field or industry demonstrating a history of accomplishment, well positioning himself to advance his proposed endeavor.

The record also includes samples of partial articles that cited to the Petitioner's co-authored work. Based on these excerpts, the authors reference the Petitioner's research as background material for their own findings, and these limited articles do not represent a level of his success in the field. The articles do not distinguish or highlight the Petitioner's work from the other cited papers.

Regarding his overall citation record, the Petitioner initially provided evidence from Google Scholar (GS) reflecting 31 citations, with his highest cited article receiving 10 citations. The Petitioner, however, did not specify how many citations were self-citations by him or his coauthors. Furthermore, the Petitioner submitted data from Clarivate Analytics (CA) regarding baseline citation rates and percentiles by year of publication for the engineering field. The Petitioner claimed that his citations from articles published in 2018 ranked among the top 20%. The Petitioner did not indicate whether he factored in any self-citations in determining these percentile rankings. Moreover, the documentation from CA states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

In response to the director's RFE, the Petitioner provided updated GS figures reflecting 45 total citations, with his highest cited article receiving 16 citations. In addition, he offered a list of 38 highlighted articles claiming to represent independent citations. Further, he submitted an email from CA explaining that "[t]he word skew simply describes a natural phenomenon of citation distributions: a few papers receive many cites, whereas most papers receive a few or no cites" and "[t]his is merely a natural fact, and [CA] has no influence on this." However, this response does not demonstrate the accuracy and reliability of CA information.

Regardless, the Petitioner has not established that the number of citations received by his published articles and conference papers reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Further, the Petitioner asserts that his "citation count dwarfed . . . the petitioner in *Dhanasar*" in our precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

The record also includes a letter from Dr. R-A-C- at [] stating that the Petitioner has worked on a project that was partially funded by a grant from the National Science Foundation's [] program. However, the record does not contain copies of the research grant showing the Petitioner as a named grant recipient. In *Dhanasar*, the record established that the petitioner

“initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner was mainly responsible for obtaining funding for the research project.

As it relates to his peer review activity, the Petitioner provided documentation evidencing his review of manuscripts for journals and conferences. The Petitioner, however, did not explain the significance of his review experience or demonstrate that his participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his endeavor.

The record demonstrates that the Petitioner has conducted and published research while pursuing his education, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing his research.

III. CONCLUSION

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. As such, analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.³ Accordingly, the Petitioner has not shown eligibility for a national interest waiver.

ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues in the decision of which is 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).