



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

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

In Re: 28408113

Date: NOV. 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a research foundation, seeks second preference (EB-2) immigrant classification for the Beneficiary as a member of the professions holding an advanced degree. *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 did not establish that the Beneficiary is well positioned to advance his proposed endeavor or 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 matter is now before us on appeal. 8 C.F.R. § 103.3.

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 sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification of the beneficiary 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.

If a petitioner demonstrates the beneficiary's eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating

national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- 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.²

II. ANALYSIS

The Director concluded that the Petitioner has established that the Beneficiary qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer for the Beneficiary, and thus a labor certification, would be in the national interest.

The Beneficiary is currently employed in H-1B status as an assistant research scientist as part of a decades-long epidemiological study being conducted by the Child Psychiatric Department at [redacted] University. The Beneficiary intends to continue his work on this study and to continue his employment with the Petitioner's foundation to advance research endeavors in the field of longitudinal studies and the application of data from those studies.

For the reasons discussed below, we conclude the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. An endeavor may have national importance because it has national or even global implications within a particular field, such as improved medical advances. *Id.* "Endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." *Id.*

The Director's decision initially states that the proposed endeavor has substantial merit and national importance. However, in evaluating the third prong of the *Dhanasar* framework, the decision later states that the Petitioner has not established that that the proposed endeavor is of substantial merit or national importance. The record includes the following description from the Petitioner of the research that the Beneficiary intends to continue in 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).

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

The [redacted] is an epidemiological research study assessing mental health in a community sample of Puerto Rican youth which seeks to understand the lived experiences of Puerto Ricans in the US and Puerto Rico.... [It is included] in the Environmental Influence on Child Health Outcomes (ECHO) Program of the National Institutes of Health.

The lead investigator of the study under whom the Beneficiary works directly provided the following:

[The Beneficiary], who holds a Master of Science degree in psychiatry and medical psychology, has been a member of my research team since October 2016 pursuant to an approved H-1B visa petition.... He manages the database of the [redacted]..an important epidemiological study involving two sites.... The [redacted] is a longitudinal scientific project initiated in the 2000s which has been collecting data from Puerto Rican families from the [redacted] area in [redacted] and other cities from the United States and Puerto Rico.... The overall importance of the [redacted] to scientific research includes understanding and improving the [redacted] community's mental health in the United States and Puerto Rico. Some of the aims are related to substance abuse, depression, anxiety, impulsive behaviors, and intergenerational transmission.

Upon review of the record, we conclude that the proposed endeavor has substantial merit and national importance. The Petitioner has established eligibility under the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

The Director determined that the evidence “does not support the statements that the beneficiary will be able to make a significant contribution as of the time of filing this petition or that the beneficiary will now be able to make a significant contribution in the U.S.” The Director determined that “none of the submitted evidence shows that the beneficiary has [made] any contribution to the proposed endeavor other than managing the databases related to the studies of [the lead investigator].” On appeal, the Petitioner submits a brief asserting the following:

It appears that the Director gained the misimpression that the beneficiary is a computer data analyst, which is not the case at all, he is a medical psychology researcher working with the accumulated data of the [redacted] study who holds an unmatched familiarity with its various components and is uniquely well positioned to be responsive to the needs of [the lead investigator] and her team, of which he is an integral part, to access the data they need in order to answer the questions it was hoped that the [redacted] studies would produce.

The Petitioner provides the following with regard to the Beneficiary's work and experience:

[The Beneficiary] is responsible for the design and maintenance of electronic research systems for [the , the only multi-national source of information about how mental disorders develop from childhood to young adulthood in a Latino subgroup (Puerto Ricans) involving two research sites, including the tracking of participants, data collection, extraction and merging, computerization and maintenance of study interviews, recruitment and interview schedules, and monitoring the safety of information transfer across study sites and investigators. [The Beneficiary] also generates standardized study reports to monitor field activities, Institutional Review Board and other reporting needs, and the coordination, with data management and quality control teams, of the creation of programs for systematic data screening and cleaning. These responsibilities require demonstrated ability to effectively design and maintain electronic research systems with experience and training in children's mental health assessment and data manipulation. [The Beneficiary] has been performing these duties since October 16, 2016, through the present date.

The lead investigator of the further provides extensive detail of the knowledge required to perform the Beneficiary's role, stating, "This longitudinal study required a specific understanding of a complex structure of all data collected since the beginning of the ... The understanding and knowledge of as much detail as possible of all the first generation of the project was crucial to [the Beneficiary's] work on developing the second generation of the ECHO study." Her letter of support cites specific systems, statistical tools, and various data extraction techniques, stating,

In all of this [the Beneficiary] is uniquely expert. His skill set, and its criticality to the management of the database, cannot be overstated.... He also provides data access to the analyst team...[and] to the researchers, including the postdoctoral team which uses the data to generate scientific results in the development of publications in important Journals. [The Beneficiary] has been responsible for the organization and logging of all data shared since 2017.

The Petitioner emphasizes the following:

These responsibilities require demonstrated ability to effectively design and maintain electronic research systems with experience and training in children's mental health assessment and data manipulation.

...

[The Beneficiary] has an intimate and global familiarity with the data accumulated over a period of more than twenty years in the study, which positions him to assist our researchers needing access to the data in a meaningful format. There is literally no other data researcher with the credentials he holds regarding the data systems and materials.

The lead investigator also provides additional context for the Beneficiary's position within the Petitioner's foundation:

As an employee of Research Foundation for [redacted] the [Beneficiary] is extremely well-placed to further the advance of research into gambling and impulsive behaviors, mental health and early cardiovascular risk. ECHO...studies substance abuse, depression, anxiety, impulsive behaviors, and intergenerational transmission, all of which are crucially important to the national interest of the United States, and all of which are using the database of the [redacted] longitudinal study, which he manages, to advance. As an organization, the employees of Research Foundation for [redacted] [redacted] have been responsible for significant American scientific research advances, including:

- Introduction of pharmacological treatment for depression and affective disorders;
- Application of computers to psychiatry;
- Development of the first mental health information systems;
- Demonstration of the efficacy, dosage and safety of new psychotropic drugs and their generic bioequivalents;
- Development of now widely used laboratory assay technology to measure therapeutic blood levels;
- Development of statistical design techniques and data analysis methodologies for clinical trials;
- Discovery of the optimal plasma level of haloperidol for treatment of schizophrenia.

The record is also supported by references to material discussing the work of the foundation and a detailed history of the lead investigator's credentials. The record includes information concerning the Beneficiary's work on a number of research projects and studies related to mental health, several of which focused on children and families. The Beneficiary's education in psychiatry and medical psychology and his deep involvement in the [redacted] research demonstrate that he is well positioned to advance the endeavor of that research and future longitudinal research with the foundation.³ Accordingly, we withdraw the Director's decision and conclude that the Petitioner has demonstrated that the Beneficiary satisfies the second prong of the *Dhanasar* framework.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a 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, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be

³ USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees. See generally 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policymanual>.

beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

The Director determined that the Petitioner did not demonstrate that it would be impractical for an employer to secure a job offer or to obtain a labor certification, nor, he determined, did the evidence demonstrate an urgency in the Beneficiary's contributions sufficient to warrant forgoing the labor certification process. He also stated, "Vague and generalized descriptions provided are of limited evidentiary value. Merely repeating the language of the statute or regulation does not satisfy the petitioner's burden of proof." Contrarily, as presented above, the Petitioner and the lead investigator of the long-time research project on which the Beneficiary has worked for several years provided highly detailed descriptions of that work, the project, and its importance as part of the National Institute of Health's ECHO program. The record demonstrates that the Beneficiary's work and role are integral to the seamless continuance of the project and that, as the first of its kind, it has the potential to benefit the United States on a national scale. The Petitioner provides the following rationale for granting a waiver of the job offer requirement:

Individual labor certifications are designed to elicit whether a minimally qualified U.S. worker can be located; they seek out the lowest common denominator. Here, through the National Interest Waiver, the petitioner is enabled to employ not the lowest common denominator researcher, but a highly and unusually qualified worker who is perfectly suited to carry on research in the field of longitudinal study data management through his experience with the

Based on the Beneficiary's research history and the significance of his work to advance U.S. scientific and public health interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming other qualified U.S. workers are available. Accordingly, we withdraw the Director's decision and find the Petitioner has demonstrated eligibility under the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has demonstrated the Beneficiary's eligibility for the underlying EB-2 classification and has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that they merit a discretionary waiver of the job offer requirement in the national interest.

ORDER: The appeal is sustained.