



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

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

In Re: 34868620

Date: NOV. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical engineer and researcher, seeks employment-based second preference (EB-2) 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner merited a waiver of the job offer and labor certification requirements for EB-2 classification. The matter is now before us on appeal pursuant to 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 dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they 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. 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

- 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.

Id.

II. ANALYSIS

At the time of filing, the Petitioner proposed to continue his research into developing electric motors and effective control algorithms to achieve efficiency and improve variable speed drives, robotics, and electric vehicle applications through a post-doctoral fellowship at the [REDACTED] In response to the request for evidence the Petitioner indicated he would seek a research position at a prestigious research institution to perform the same research in a different setting.

The Petitioner initially described his proposed endeavor as follows:

Specifically, he will develop innovative rotor and stator lamination designs for permanent-magnet assisted synchronous reluctance machines (PMASRMs) to enhance efficiency and output torque capabilities, employ finite element analysis (FEA) software like ANSYS Maxwell and FEMM 4.2 to examine how design variables influence motor performance, develop advanced control algorithms to optimize dynamic responses across various operational scenarios, create a motor prototype utilizing contemporary manufacturing methods, including 3D metal additive printing, CNC machining, and laser cutting, and publish original electrical engineering research in peer-reviewed journals and conferences.

In response to the Director's request for evidence, the Petitioner states that he seeks to:

“...advance artificial intelligence integration in advanced motor design and controlling; adopt metal additive technology to overcome challenges in rotor and stator lamination manufacturing; and working to reduce parasitic capacitance to facilitate the integration of high-frequency power drives for motor systems.”

In addition, the Petitioner indicated that his research had the potential to provide far reaching economic effects in the realm of electric motor efficiency saving “anywhere from 9% to 23% of the total electricity consumption in the United States...” The Petitioner argues that his combination of education, publication and citation record, grant funding, and record of past success makes him well positioned to advance his proposed endeavor. The Petitioner also argues that it is impractical for him to complete labor certification and that it is in the best interest of the United States to waive the job offer and labor certification requirements because his proposed endeavor is the subject of multiple national initiatives in critical emerging technologies (CET).

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. *Id.* at 889.

The Director determined that the Petitioner's proposed endeavor had substantial merit but that he had not established that his proposed endeavor would have the economic or industry wide effects necessary to rise to the level of national importance. On appeal, the Petitioner argues that the Director did not fully consider the evidence provided or properly apply USCIS policy as it relates to national interest waivers in the Science, Technology, Engineering and Math (STEM) fields. The Petitioner provided government reports, expert opinion letters, industry articles and evidence of a national science foundation grant as evidence to support his contention that his research efforts are nationally important.

The record supports the Petitioner's contention that his work on the efficiency of magnetic motors for use in electric vehicles could have several positive effects on the economy and the environment. The letter from R-M-², a Professor at the [REDACTED] where the Petitioner is a doctoral candidate engaged in research, states that the Petitioner's contributions to the understanding of permanent magnet assisted electric motors used in electric vehicles has the potential to increase efficiency and decrease the cost of manufacturing resulting in real economic effects for both consumers and manufacturers. The industry articles and research papers submitted by the Petitioner in support of the national importance of his proposed endeavor identify several areas of concern in relation to the mass adoption of electric vehicles, including the efficiency of electric motors.

We agree with the Petitioner that the Director did not appear to consider USCIS policy as it relates to individuals working in a STEM field with an advanced degree. While this policy does not equate to an automatic approval of every STEM related petition, it does provide guidance on the evidentiary weight that should be given to individuals working in fields of critical emerging technologies. Here, the Petitioner has established that his work on permanent magnet electric motors is related to the critical emerging technologies of Advanced Engineering Materials, Advanced Manufacturing, and Renewable Energy Generation and Storage. As a result, we give his proposed endeavor to enhance magnetic engine efficiency significant evidentiary weight.

Therefore, the record sufficiently establishes that the proposed endeavor could offer positive economic effects and environmental consequences that reach beyond the Petitioner's research to affect the field of electrical engineering more broadly, and therefore, the U.S. economy, due to the size and scope of the electric vehicle industry and the potential applications of the Petitioner's research across multiple disciplines. Given the importance of research into electric motor optimization, and the potentially positive environmental and economic effects of the Petitioner's research, we find that the Petitioner's proposed work has both substantial merit and national importance.

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

² We use initials to protect the privacy of individuals.

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 Petitioner had not established that he was well-positioned to advance his proposed endeavor. On appeal, the Petitioner argues that the Director applied an incorrect standard to the Petitioner's claim, did not give due weight to the submitted evidence, and misconstrued the requirements of *Dhanasar*. The Petitioner argues that his education, skills, knowledge, record of success, model for future activities, progress toward achieving his endeavor, and interest from potential customers, users and relevant entities establishes that he is well-positioned to advance the proposed endeavor. As stated above, we review the Petitioner's claim of eligibility de novo.

The Petitioner has established that he has the foreign equivalent of a U.S. master's degree and is currently in a doctoral program in the United States. The Petitioner provides evidence of his past research in the field of electrical engineering, copies of his research papers and presentations, copies of research articles that cite to his work, a google scholar citation record, letters of support discussing his prior research, and evidence related to his academic record. The Petitioner originally claimed that he planned to pursue a post-doctoral research fellowship at the [REDACTED] to advance his proposed endeavor. Following the Director's request for evidence the Petitioner stated that he would seek a research position at a prestigious research institute rather than continue his research as a post-doctoral fellow. While the Petitioner claims he would seek a position with one of several research institutes, he has not provided evidence that those organizations are interested in his services as a researcher or in his research more generally to the point that they would be willing to fund any of his future research activities. This change in the Petitioner's plan for future research activities and the lack of evidence that the stated organizations are interested in his research casts doubt on his ability to advance his proposed endeavor.

In our determination that *Dhanasar* was well-positioned under the second prong, we also weighed "the sustained interest of and funding from government entities" for his proposed endeavor. *Id.* at 893. We noted that, in making such a determination, we consider factors including interest of potential customers, users, investors, or other relevant entities or individuals in the endeavor. *Id.* at 890. The Petitioner cites to grant funding from the National Science Foundation as evidence that he is well-positioned to advance his proposed endeavor. However, this funding is directly tied to work being done by a team of researchers at the [REDACTED] and would not follow the Petitioner if he chose to take a research position for a new organization. Because the Petitioner has stated he intends to continue his research elsewhere upon the conclusion of his degree, the evidence of a grant for the [REDACTED] holds little evidentiary weight. The lack of detail regarding future funding for his research after attaining his degree and the lack of specific details of where, when, and how the Petitioner intends to take up his new position casts doubt on his ability to advance his proposed endeavor.

The Petitioner also provided multiple letters of support from his peers attesting to the importance of his work on electric motor design and his past success in developing a cost-efficient solar controller. Specifically, the letters of support highlight the Petitioner's research article [REDACTED]

[REDACTED] cited by another research group. However, the majority of the letters focus on

the Petitioner's work from 2011 when he developed a cost-efficient solar controller rather than focusing on his current proposed endeavor in engineering new magnetic motor designs. We acknowledge the letters of support and give them due weight regarding the Petitioner's past record of success in electrical engineering. The Petitioner claims that his citation record demonstrates an interest in his work and a level of success in advancing his proposed endeavor. While we acknowledge that the Petitioner has published several articles and made presentations at industry conferences, his citation record of four citations for his work on magnetic motors lacks sufficient context to establish that his work is well-regarded within his specific area of research.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies 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 and presented work has served as an impetus for progress in the electrical engineering field or that it has generated substantial positive discourse in the electrical engineering community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to energy efficiency in electric vehicles robotics, or electric motors generally. 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.

C. Whether on Balance a Waiver is Beneficial

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. Because the Petitioner has not established eligibility under the second prong of the *Dhanasar* framework, we decline to reach and hereby reserve remaining arguments concerning eligibility under the third prong. *See INS v. Bagamashad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues 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).

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for, or otherwise merits, a national interest waiver. Thus, the appeal will be dismissed

ORDER: The appeal is dismissed.