

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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. 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

If a petitioner demonstrates 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.” 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:

- 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Petitioner is a doctoral student and graduate assistant in the Additive Manufacturing Laboratory, Department of Mechanical Engineering, [REDACTED]. In her personal statement initially submitted with her petition, the Petitioner stated “[m]y proposed plan is to continue to use my advanced degree, and my qualifications to position myself in a way to positively impact the academics and industrial sector of the United States.” The Petitioner also stated, “I will further create a platform in promoting girls to be leaders in my field, and also be able to comfortably encourage more ‘girl child’ to study STEM.”²

In response to the Director’s request for evidence (RFE), the Petitioner submitted a more detailed description of her proposed endeavor in which she stated, “I am currently working on the ‘Fabrication of Inconel/Aluminum Composites by Direct Metal Laser Sintering,’ and the fabrication and characterization of Austenitic Stainless Steel 316L by additive manufacturing.” The Petitioner explained “my plan is to continue research on Inconel/Aluminum Composites Fabrication and periodically publish my work/findings in reputable journals. Also, to work as a researcher and/or tutor with specialty in Additive Manufacturing (AM) and accomplish my post-doctoral degree in the same field.” The Petitioner added that her “postdoctoral work will focus on Laser Powder Bed Fusion (L-PBF) Process Optimization of Alloying Composition Steels for High Temperature and Functional Applications.”

The Petitioner holds a master’s degree in engineering from the [REDACTED] Nigeria, and a master’s degree in engineering from the [REDACTED] Georgia. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* at 889. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* The Director determined the Petitioner’s proposed endeavor has substantial merit. We agree.

The Director concluded, however, that the Petitioner did not establish the national importance of her proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that her proposed endeavor would sufficiently extend beyond individuals she would serve to impact her field more broadly.

² Apart from working in her field, the Petitioner did not specify how she would encourage more girls to study STEM or detail any platform she would create for girls to become leaders in her field. Without a specific proposal, we are unable to assess the Petitioner’s eligibility for a national interest waiver in this area.

On appeal, the Petitioner asserts her proposed endeavor is “of the national interest in the field of additive manufacturing” and the Director erroneously applied a higher standard of proof in assessing her eligibility. Upon de novo review, the record demonstrates the national importance of the Petitioner’s proposed endeavor.

The Petitioner submitted the Critical and Emerging Technologies List Update of the National Science and Technology Council, which identifies Advanced Manufacturing, including Additive Manufacturing, as a critical and emerging technology. See 6 USCIS Policy Manual F.5(D)(2), <https://www.uscis.gov/policy-manual> (explaining USCIS recognizes the importance of progress in STEM fields, especially in focused critical and emerging technologies). The Petitioner also submitted letters from established scientists in her field praising her work, publications, and explaining the national importance of her proposed endeavor to her field. For example, Professor [REDACTED] [REDACTED] Director of the graduate program in systems and mechanical engineering at [REDACTED] [REDACTED] stated the Petitioner’s research “is to improve on the properties and further diversify the application of Inconel,” a high-strength material which undergoes brittle failure at high temperatures. Professor [REDACTED] explained the Petitioner’s work will “contribute to advancing the manufacturing capabilities of NASA in the area of additive manufacturing.” He stated, “the national importance of additive manufacturing and Inconel cannot be overemphasized” and the Petitioner’s research will “advance the manufacturing capabilities in the aerospace and military industries to maintain the competitive advantage against our strategic competitors.”

Professor [REDACTED] of the Department of Mechanical and Aerospace Engineering at the [REDACTED] states that the Petitioner’s “work in metal additive manufacturing is of vital importance for the USA to maintain its expertise in adapting advanced manufacturing technologies.” Professor [REDACTED] explains “[u]se of metal additive manufacturing presents a drastic department from currently accepted techniques. Researchers who understand this process and how to adapt are needed to transform the supply chain for industrial as well as defense applications in the USA.”

The Director also determined the Petitioner did not establish her proposed endeavor would have substantial positive economic effects evidencing national importance as contemplated in *Dhanasar*. However, in *Dhanasar* we explained endeavors relating to research may show national importance regardless of whether they are likely to provide economic benefits. *Id.* at 889. Here, the relevant evidence demonstrates the broader implications of the Petitioner’s specific proposed research on her field at a level of national importance. The Petitioner meets the first prong of the *Dhanasar* framework and the Director’s contrary determination is withdrawn.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. 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.*

The Director determined the Petitioner was not well positioned to advance her proposed endeavor because she did not establish her findings have influenced her field beyond her current position or that her work has a record of success in her area of research. On appeal, the Petitioner claims support letters, a grant, her publications, education, and professional memberships show she is well positioned to advance her proposed endeavor.

We do not question the Petitioner's education, skills, knowledge, and membership in professional organizations. The Petitioner has not established, however, a record of success in related or similar efforts, progress towards achievement of her proposed endeavor, or interest from other individuals or entities beyond her past and current institutions and advisors. The authors of the Petitioner's support letters are all former or current advisors, colleagues, or professors at her current, past, or affiliated institutions. Two authors discuss the Petitioner's contributions to agricultural mechanization in Nigeria, but do not describe any of the Petitioner's accomplishments in her current field of research. Although other authors speak of the potential prospective impact of the Petitioner's proposed research on her field, they do not indicate that any of her recent research has been published, presented at conferences, or otherwise disseminated to her field. For example, while Professor [redacted] states the Petitioner's research could "contribute to advancing the manufacturing capabilities of NASA," the Petitioner did not submit evidence that NASA has expressed any interest in her proposed endeavor.

The Petitioner also claims citations to her work evidence her expertise. She submitted a document from an unidentified source which lists articles she authored or co-authored and states "Citation 17." The document does not indicate which articles were cited, how many times such articles were cited, or whether the citations included self-citations by the Petitioner or her co-authors. The Petitioner also did not submit evidence that her citation record is comparatively high in her field or that her work and proposed endeavor have otherwise garnered the interest of other researchers in her field. In addition, none of the Petitioner's listed articles appear to address her specific proposed research on Inconel and aluminum composites fabrication or austenitic stainless steel 316L.

The Petitioner states she "received a \$50,000 grant towards the endeavor from [redacted] [redacted] This competitive award is to advance the endeavor." However, the evidence shows the Petitioner was awarded a graduate research scholar grant of \$25,000 in 2022 from the [redacted] to support her doctoral research at [redacted] [redacted]. The Petitioner did not submit evidence that she received grant funding from any institutions outside the context of her academic education that would indicate interest in her proposed endeavor.

Based on the foregoing, the Petitioner has not established she is well positioned to advance her proposed endeavor and she does not meet the second prong of the *Dhanasar* framework.

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility under the third prong of the *Dhanasar* framework. See *INS v. Bagamasbad*, 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).

III. CONCLUSION

The Petitioner has not established she is well positioned to advance her proposed endeavor and she does not meet the second prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.