



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

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

In Re: 28944659

Date: DEC. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she 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. 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 discretion¹, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

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).

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

II. ANALYSIS

The Petitioner received a Ph.D. in Public Health from [REDACTED] in December 2020. The Director found that she qualifies as a member of the professions holding an advanced degree. The sole 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.²

With regard to her proposed endeavor, the Petitioner indicated that she intends “to continue working in the field of Public Health, especially health promotion and disease prevention research. . . . I will continue to use mixed-methods research and focus on projects geared towards helping people with disabilities (PWD).” She further stated: “Among my recent and ongoing projects at [REDACTED] is one concerned with helping visually handicapped people access tools within the [REDACTED] interface system. I also plan to continue to conduct additional public health research, like my research on vesicovaginal fistula (VVF).”

In denying the petition, the Director acknowledged that the Petitioner had demonstrated both the substantial merit and national importance of her proposed endeavor, but determined she had not established that she is well positioned to advance her proposed endeavor and that, on balance, waiving the job offer requirement would benefit the United States.³ For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated she is well positioned to advance her proposed endeavor under the second prong of the *Dhanasar* analytical framework.

A. Well Positioned to Advance the Proposed Endeavor

The Petitioner contends on appeal that determining her eligibility for a national interest waiver requires “a direct comparison” to Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. As discussed above, *Dhanasar* sets forth a three-prong analytical framework for granting national interest waivers.⁴ While the Petitioner may share some similarities with Dr. Dhanasar, they do not work in the same field.⁵ Each national interest waiver case is decided on its own merits based on the record

² To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. See *Dhanasar*, 26 I&N Dec. at 886 n.3.

³ We agree with the Director that the Petitioner has satisfied the first prong of the *Dhanasar* framework. For example, the Petitioner submitted documentation indicating that the benefit of her proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences.

⁴ The *Dhanasar* framework is intended to “apply more flexibility to circumstances of both petitioning employers and self-petitioning individuals.” *Id.* at 888-89.

⁵ Specifically, the Petitioner performs public health research, whereas Dr. Dhanasar conducted research and development relating to air and space propulsion systems.

of proceeding before us. In determining whether a petitioner meets *Dhanasar's* second prong, “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.” *Id.* at 890.

The record includes the Petitioner’s curriculum vitae, academic records (including her Ph.D. in Public Health), published and presented work, and invitations to serve as a peer reviewer. In addition, the Petitioner provided her ResearchGate profile, documentation of articles that cited to her research findings, information about her medical mission trip to Uganda, and letters of support from colleagues discussing her research projects.

In letters supporting the petition, several references discussed the Petitioner’s research projects.⁶ For example, Dr. Y-O-, a health scientist/epidemiologist with the [redacted] [redacted] stated that “in one of her studies, [the Petitioner] identified facilitators and barriers to contingency management alcohol intervention involving a transdermal alcohol sensor. This is an innovative research work because of limited knowledge and the impact on people at risk.”⁷ While Dr. Y-O- asserted that the Petitioner’s “work shows that it is important to include social support as part of the contingency management strategy to reduce alcohol use,” he does not offer specific examples indicating that the Petitioner’s work has affected the field of public health or otherwise represents a record of success or progress rendering her well positioned to advance the proposed endeavor.

With respect to the Petitioner’s public health research involving criminal data, Dr. A-S-, Manager for Biostatistics and Predictive Analytics at [redacted] Florida, indicated that the Petitioner “conducted analysis and investigation of crimes using the Chicago crime dataset to gain novel insights on why, when, and how crimes are carried out. Her research also focused on identifying the relationship of socioeconomic indicators like poverty rate and unemployment with the incidence of crime.”⁸ Dr. A-S- stated that “[f]indings from [the Petitioner’s] research . . . highlighted the fact that any criminal activity is neither orderly nor totally random. It drifts with the phases of human behavior, but some places seem to be more susceptible to crimes due to various factors.” Dr. A-S further asserted that the Petitioner’s research demonstrated that education status, dependency, and Hardship Index were significantly associated with the rate of criminal activities in Chicago, but he did not explain how the Petitioner’s research findings have generated positive interest among relevant parties, have been implemented by others in the field, or otherwise reflect a record of success or progress rendering her well positioned to advance the proposed endeavor.

In addition, Dr. J-D-, professor in the Department of Health Promotion and Disease Prevention at [redacted] stated that the Petitioner’s “research has shown how community empowerment and engagement is directly linked to improved health outcomes and decreased risk behaviors among underprivileged youth.” While Dr. J-D- indicated that that Petitioner’s “findings are important because they inform the development of effective and culturally tailored multilevel intervention programs aimed at

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁷ Dr. Y-O-’s letter was not issued on [redacted] letterhead and therefore it does not signify an official agency endorsement. In addition, his letter indicates that he is “a subject matter expert in HIV/TB program implementation” rather than alcohol misuse and treatment.

⁸ Dr. A-S- received his Ph.D. in Public Health from [redacted]

increasing community engagement among youth,” the record does not indicate that her published and presented work has been frequently cited by independent researchers, has influenced the public health field, or otherwise constitutes a record of success or progress in her research field.

Regarding the Petitioner’s VVF quality of life (QoL) research, Dr. N-O-, “a Medical Doctor of Podiatric Medicine and Surgery at the [redacted] Hospital in New York,” “Director of the SDG-3 [redacted] and “Health Director of the United Nations [redacted]” indicated that the Petitioner conducted mixed methods assessments of knowledge, attitudes, and beliefs relating to VVF. Dr. N-O- asserted that the Petitioner “found significant improvements in the QoL scores” for role limitations, physical limitations, social limitations, emotions, severity measures, and symptom severity scale “when compared to those who had unsuccessful surgeries.” Dr. N-O- stated that “[o]utcomes from [the Petitioner’s] research on this topic are important because they lead to the development of effective and culturally tailored intervention programs aimed at primary and secondary prevention of VVF,” but she does not offer specific examples indicating that the Petitioner’s work has affected intervention programs or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance her proposed endeavor.

Dr. N-O- also mentions the Petitioner’s September 2022 medical mission trip to Uganda, but the Petitioner’s work on this trip post-dates the filing of the petition.⁹ Likewise, the Petitioner submits an August 2022 letter from J-M-, a user experience designer at [redacted] Services LLC, stating that “[i]n June 2022, [the Petitioner] conducted accessibility research for PWD across [redacted] to identify accessibility pain points and experiences within the Offer-to-Start MLP manager workflow.”¹⁰ Again, this work was conducted after the petition’s filing date.¹¹ Eligibility must be demonstrated at the time of filing the benefit request. See 8 C.F.R. § 103.2(b)(1), (12).

As it relates to the citation of the Petitioner’s work, the appellate submission includes information from Google Scholar indicating that her four highest cited articles, entitled [redacted]
[redacted]
[redacted] and [redacted]
[redacted] each received 4, 2, 2, and 1 citation(s), respectively. The Petitioner, however, has not demonstrated that the number of citations received by her published articles reflects a level of interest in her work from relevant parties sufficient to meet *Dhanasar’s* second prong.

The Petitioner contends that her “ResearchGate score is already 6.05,” while Dr. Dhanasar’s “is only 1.37.” The record, however, does not indicate how these two scores were calculated or that they represent an objective measure of research impact.¹² She also maintains that she has “more peer-

⁹ The Form I-140 petition in this matter was filed in July 2021.

¹⁰ J-M-’s letter was not issued on [redacted] letterhead and therefore the Petitioner has not shown that it constitutes an official company endorsement of the information in the letter.

¹¹ In addition, the Petitioner submitted documentation indicating that she was recognized by the [redacted] Young Alumni Network in its inaugural “5 under 35” ceremony in May 2022, but this honor also post-dates the filing of the petition.

¹² ResearchGate announced its “decision to remove the RG Score after July 2022” indicating that “members were frustrated

reviewed publications and more independent citations” than Dr. Dhanasar. 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, experience, and expertise 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. Further, as it relates to the Petitioner’s education, the record indicates that she received a Ph.D. in Public Health from [redacted]¹³ While the Petitioner’s Ph.D. renders her eligible for the underlying EB-2 visa classification and is a positive factor for consideration, she has not shown that her academic accomplishments and citation record by themselves are sufficient to demonstrate that she is well positioned to advance her proposed endeavor.¹⁴ We look to a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor, and education and citations are merely two factors among many that may contribute to such a finding.

The Petitioner asserts that Dr. Dhanasar’s employer, North Carolina Agricultural and Technical State University, received \$97.3 million in research funding in 2022, while her employer, [redacted] incurred research and development (R&D) expenses of \$67.7 billion. She states: “If [Dr.] Dhanasar was found to be ‘well positioned’ back when he was a researcher at a small college, there is no doubt that Ph.D. research at [redacted] (annual R&D budget of \$67+ billion) is also ‘well positioned.’” The Petitioner’s argument misstates our findings relating to the second prong of the *Dhanasar* framework. This prong shifts the focus from the proposed endeavor to the petitioner. *Id.* at 890. As *Dhanasar*’s second prong focuses on the individual, the Petitioner has not sufficiently explained or established how an employer’s annual R&D budget or a university’s research funding total are relevant to our determination under prong two.

In *Dhanasar*, the record established that Dr. Dhanasar “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.”

with the RG Score’s intransparency We also heard from members who reported fluctuations in their score that they couldn’t explain. At the same time, we have been following the movement within the academic community towards responsible use of research metrics and a more holistic approach to assessing research impact.” ResearchGate further stated: “We realized we need to adopt a more regular practice of continuous evaluation of our metrics to ensure that they work to support the science community and not harm it. To help facilitate this, we started by defining a set of criteria that we strive to follow for our metrics moving forward” These new criteria included:

Intuitive: We strive to make our metrics intuitive to understand, so that you can apply/use them responsibly.

Transparent: We strive to make the calculation and inputs of our metrics transparent for everyone.

Robust: We strive to make our metrics difficult to artificially manipulate or influence and to not experience disruptive calculation changes over time.

Relevant: We strive to not show our metrics out of context, pushing for their responsible use and to always provide the right context to our metrics.

ResearchGate further noted: “Unfortunately, the RG Score doesn’t meet some of these criteria. After considering these points, we made the decision to remove the RG Score.” See <https://www.researchgate.net/researchgate-updates/removing-the-rg-score>, accessed on December 4, 2023, and copy incorporated into the record of proceeding.

¹³ 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.

¹⁴ “USCIS considers an advanced degree, particularly a Doctor of Philosophy (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/policy-manual>.

Id. at 893, n.11. Further, the “consistent government funding” of Dr. Dhanasar’s specific research projects was also a relevant consideration in determining that he was well positioned to advance his proposed endeavor. *Id.* at 893. In the present matter, unlike in *Dhanasar*, the Petitioner has not presented copies of research grants showing the funding she obtained for her specific projects at [] or []. That said, private or public sector interest in, or funding of, an individual’s work are not the only factors that we consider in determining eligibility under prong two of the *Dhanasar* framework.

Regarding her invitations to serve as a peer reviewer, the Petitioner provided several emails dated March 2022 and thereafter asking her to review manuscripts submitted to *Heliyon*, *JMIR Human Factors*, and *JMIR Research Protocols*. These invitations post-date the filing of the petition. Eligibility must be demonstrated at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1), (12). Further, the record does not indicate that the Petitioner completed any of the requested manuscript reviews. Nor has the Petitioner demonstrated that her level of participation in the widespread peer review process represents a record of success in her field or is otherwise an indication that she is well positioned to advance her research endeavor.

The record demonstrates that the Petitioner has conducted research during her graduate studies and while at [] but she has not shown that this work renders her well positioned to advance her proposed endeavor. 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 their 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 support such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the public health field or that it has generated substantial positive discourse in alcohol use intervention, engaging underprivileged youth, predicting criminal activity, prevention of VVF, and assisting PWD. Nor does the evidence show that her research findings have been frequently cited by independent researchers or otherwise constitute a record of success or progress in advancing research relating to public health.

For the aforementioned reasons, the Petitioner has not satisfied the second prong of the *Dhanasar* framework. Because the documentation in the record does not establish that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“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).

B. O-1 Nonimmigrant Status

The Petitioner argues that her receipt of an O-1 nonimmigrant visa is “strong evidence” that she is well positioned to advance her proposed endeavor. The record reflects that in March 2022 (eight

months after her Form I-140 immigrant petition was filed), the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, this approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law.

Many Form I-140 immigrant petitions are denied after USCIS approves nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See, e.g., La. Philharmonic Orchestra v. INS*, 248 F.3d 1139 (5th Cir. 2001) (per curiam). Nor are we required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Constr. & Design Co. v. Bureau of Citizenship & Immigr. Servs.*, 2008 WL 2074097 *5 (N.D. Ill. May 14, 2008) (describing as “prudent” that the AAO “assess each application on its own, rather than rubber stamping applications merely because of prior approvals”), *aff'd sub nom. Constr. & Design Co. v. U.S. Citizenship & Immigr. Servs.*, 563 F.3d 593 (7th Cir. 2009).

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.