



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

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

MATTER OF H-C-C-

DATE: JULY 26, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a plastic surgeon, 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. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver due to his work aimed at developing new techniques in the areas of breast augmentation, rhinoplasty, and ophthalmoplasty. In May 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, the Petitioner provides further evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest¹ waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, 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.

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. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ 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.

The Petitioner stated that he is a "researcher in the field of cosmetic surgery" and that his "target employment is in the field of cosmetic and reconstruction plastic surgery." At the time of filing, he was serving as the chief executive officer and director of the [REDACTED] in Korea. In addition, he was working as "a visiting professor at both [REDACTED] and [REDACTED]."

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he seeks to perform plastic surgery procedures on U.S. patients and to share his surgical innovations with other U.S. practitioners. He states that his research "is directed toward improving techniques and processes . . . in not only cosmetic plastic surgery cases, but in medically necessary cases." The Petitioner further attests that his "achievements in research advance broad interests related to the application of plastic surgery techniques." He also contends that his innovative methods "are helping to improve not only cosmetic but reconstructive plastic surgery techniques, as well as minimize suffering from these techniques." We find that the Petitioner's proposed work assisting patients as a clinician and researcher in plastic surgery has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of his work. In response, he maintains that "he will continue to make major innovations and improvements to the [plastic surgery] field in the U.S." His response includes a "Personal Statement" addressing his "future research plans" involving studies and research concerning facial cosmetic surgery. In addition, the Petitioner provides letters from surgical faculty discussing his proposed research aimed at plastic

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

³ The Petitioner provided graduation certificates from the [REDACTED] and [REDACTED] stating that he received a Master of Medicine (1996) and a Doctor of Philosophy (2000). In response to our RFE, he offers an academic credentials evaluation indicating that his degrees are "the equivalent of a Master of Science degree in Medical Science and a Doctor of Philosophy degree in Anatomy from an accredited institution of higher education in the United States."

surgery improvements and its potential benefit to our nation's healthcare system. For example, [REDACTED] an associate professor in the department of plastic and reconstructive surgery at [REDACTED] in Korea, asserted that the Petitioner's innovative surgical techniques "will bring significant relief to many American patients." The record establishes that the proposed benefit of his research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. Accordingly, we find the evidence sufficient to demonstrate that the Petitioner's proposed research to improve plastic surgery techniques is of national importance. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he meets the first prong of the *Dhanasar* framework.⁴

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications.⁵ The Petitioner submitted documentation of his published work, membership in the [REDACTED] medical certifications, appreciation awards, and academic credentials. He also offered reference letters from four colleagues in Korea discussing his surgical experience and research projects. In response to our RFE, the Petitioner provided an academic credentials evaluation, additional professional memberships, a photograph from a conference presentation, and another reference letter.

The Petitioner maintains that his work "has already resulted in several major contributions that have significantly benefited his field" and "has already had a significant impact that has benefited numerous facets of his industry." In letters supporting the petition, surgical faculty discussed the Petitioner's development of several plastic surgery methods. For example, [REDACTED] professor in the department of plastic and reconstructive surgery at [REDACTED] in Korea, indicated that the Petitioner "developed a brilliant new method of breast augmentation surgery" that involves "inserting an endoscope through the navel and inserting breast prostheses." [REDACTED] further noted that the advantages of the Petitioner's method include no outward scarring and eliminating the need for insertion of a suction pipe during surgery. In addition, [REDACTED] director of the [REDACTED] in Korea, explained that the Petitioner "developed a new technique of breast augmentation" involving transplantation of "analogous fat tissue to the breast, instead of using common method of inserting breast implant." [REDACTED] asserted that this technique offers advantages such as speedy surgery and painless recovery. The record does not include supporting documentation to establish that the Petitioner was responsible for developing the claimed techniques.

⁴ Unlike his proposed research, the Petitioner has not established that his clinical work would impact the plastic surgery field and healthcare industry more broadly, as opposed to being limited to the patients he serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a plastic surgeon does not alone meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

⁵ As noted above, the Petitioner has not demonstrated that his proposed clinical activities as a plastic surgeon meet the "national importance" element of the *Dhanasar* framework's first prong. Accordingly, we will limit our analysis under this prong to his proposed research.

Regardless, while [REDACTED] and [REDACTED] claimed that the Petitioner's methods will encourage American patients to undergo mammoplasty, they did not offer specific examples of how his techniques have generated positive interest among relevant parties, have been implemented in other surgical clinics, or otherwise reflect a record of success in his area of research.

Furthermore, [REDACTED] professor in the department of plastic and reconstructive surgery at [REDACTED] in Korea, stated that the Petitioner has "been practicing ophthalmoplasty through a new method, 'shortening of aponeurosis of levator muscle' on the basis of his extensive experience in ptosis surgery." [REDACTED] added that this method avoids scarring, offers a natural look, does not require a thigh muscle autograft procedure, and prevents movement disorder of the lower body. He did not identify any surgical centers that have adopted the technique nor does the record include supporting evidence to demonstrate that the Petitioner developed it. Lastly, [REDACTED] an associate professor in the department of biomedical engineering at [REDACTED] contends that the Petitioner "is an outstanding surgeon who has extensive surgical experiences" and that "his plastic and reconstructive surgery may affect the U.S. commerce [sic] significantly."

The record demonstrates that the Petitioner has conducted, published, and presented research during his medical career. 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 or her proposed research. 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 has not shown that his plastic surgery research has been frequently cited by other medical professionals or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community. Nor does the evidence otherwise demonstrate that his work otherwise constitutes a record of success in his area of research.

With respect to the Petitioner's professional memberships, his response to our RFE includes a certificate from the [REDACTED] reflecting that he became an international member in March 2015. In addition, he provides documentation of his 2016 membership in the [REDACTED]. Lastly, he offers a photograph reflecting that he presented his work at a [REDACTED] meeting in 2016. However, the Petitioner has not documented the reputation of the aforementioned societies or offered other evidence demonstrating that his memberships render him well positioned to advance his proposed research endeavor. Further, he has not demonstrated that his memberships required a record of success in his field, that his [REDACTED] presentation garnered substantial interest, or that he is otherwise well positioned to advance plastic surgery research.

Finally, we note that the Petitioner has not offered sufficient information or evidence regarding how he is positioned to carry out and fund his proposed research in the United States. As the Petitioner is

applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. However, information about the nature of the proposed endeavor, such as the capacity in which he will work, is necessary for us to evaluate whether the Petitioner is well positioned to advance the endeavor.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rise to the level of rendering him well positioned to advance his proposed endeavor of improving cosmetic and reconstructive plastic surgery techniques. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

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. Here, the Petitioner claims that he is eligible for a waiver due to accomplishments that are greater than those of his peers. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of H-C-C-*, ID# 433104 (AAO July 26, 2017)