



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

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

MATTER OF K-H-S-

DATE: JUNE 7, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a researcher who investigates molecular treatments for cardiovascular disease, 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 petition, finding that the Petitioner did not qualify for classification as an individual of exceptional ability, or establish that a waiver of a job offer would be in the national interest. The Director did not address the Petitioner's eligibility as a member of the professions holding an advanced degree.

The matter is now before us on appeal. In his appeal, the Petitioner asserts that the Director "misapplied or ignored" the relevant law resulting in an abuse of discretion. He maintains that he qualifies as an advanced degree professional and that he is eligible for the waiver based upon the significance of his research in cardiovascular medicine.

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 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 interest waiver. . . . [T]he Attorney General¹ 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. 884.² *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.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

² 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*).

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 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.³

II. ANALYSIS

The Petitioner's research focuses on the application of molecular biology to the treatment of cardiovascular disease. The Director did not address the Petitioner's asserted eligibility as a member of the professions holding an advanced degree, and instead evaluated his qualifications as an individual of exceptional ability. The record includes evidence that, in 2011, the Petitioner earned the equivalent of a PhD from the [REDACTED] Taiwan.⁴ Thus, we find that he is eligible under this classification as a member of the professions holding an advanced degree.⁵ The remaining issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

At the time of filing the petition, the Petitioner indicated he was employed as a postdoctoral researcher at [REDACTED] Maine, where he focused on cardiovascular medicine.⁶ The Petitioner explained that he plans to continue his cardiovascular research into improving cardiovascular functioning and developing innovative treatments for heart disease and stroke. He stated that he aims to "characterize new pathways to induce endothelial nitric oxide release, thereby benefiting endothelial-related cardiovascular diseases and atherosclerosis," while developing "specific molecular targets" in the battle to "treat and cure" cardiovascular diseases. The Petitioner submitted reports describing how endothelial cell-related vascular dysfunctions are fundamentally linked to cardiovascular disease development, which is a leading cause of death around the world. We find that the Petitioner's proposed work has substantial merit because it aims to improve understanding of novel therapeutic and pharmacological avenues of treatment for cardiovascular diseases.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The record includes a copy of an evaluation of educational credentials indicating that the Petitioner's degree is the equivalent of a PhD in the field of physiology awarded by an accredited institution of higher education in the United States.

⁵ As the Petitioner is already eligible for the underlying immigrant classification as a member of the professions holding an advanced degree, an additional finding of exceptional ability would serve no meaningful purpose in this matter.

⁶ USCIS records indicate the National Institute of Health (NIH) has subsequently sponsored the Petitioner for a nonimmigrant H-1B visa, though the record does not include additional evidence of the Petitioner's current employment.

The record also demonstrates that the Petitioner's proposed endeavor is of national importance. The Petitioner provided letters from colleagues and independent researchers in the field describing the importance of developing molecular and genetic based treatments for cardiovascular disease and discussing how clinicians and researchers rely upon comprehensive evidence-based molecular data as the critical factor to understanding heart disease and treating patients. The letters explain that the Petitioner's proposed work developing molecular pathways for treating cardiovascular disease stands to improve the quality of disease prevention and treatment, thereby alleviating the formidable cost of the disease to individuals and the economy. In addition, the Petitioner has submitted documentation indicating that the proposed benefit of his research has broader implications for his field, as the results from his work are disseminated to others through medical journals and conferences. 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.

B. Well Positioned to Advance the Proposed Endeavor

The Petitioner submitted his résumé, educational credentials, documentation of published and presented work, evidence of peer review activities, and reference letters discussing his work in the field. As discussed below, we find that the Petitioner's notable experience on projects that have attracted considerable interest in the area of cardiovascular disease and his past success in performing influential original research render him well positioned to advance the proposed endeavor.

Several of the submitted letters address the significance of the Petitioner's past work related to the [REDACTED], which mediates the production of red blood cells. For example, Dr. [REDACTED] a professor at [REDACTED] China, notes that the Petitioner has made vital discoveries to understanding [REDACTED] cardio-protective effects against foam cell formation. Dr. [REDACTED] explains that the Petitioner "provided an absolutely outstanding experimental method for oxidatively modified low-density lipoprotein formation" which he used in several of his own studies, reflecting "the deep and lasting impact of [the Petitioner's] contributions" to his work. Dr. [REDACTED] also describes how he has employed the Petitioner's methods for using liver receptors to determine [REDACTED] efficacy against atherosclerosis. He notes that the Petitioner's protocols and experimental strategies have been "indispensable" to his own research, helping him "reach some central conclusions." He attests that the Petitioner's methods contain an "uncommon clarity" and that "other researchers have greatly benefited from implementing [his] work."

Dr. [REDACTED] co-founder and chief scientific officer at [REDACTED] testifies that the Petitioner's work has established that the beta common receptor is critical to endothelial nitric oxide synthase activity. He attests that this work "has actively influenced the way investigators structure their experiments" making his contributions "markedly significant to the field at large." Dr. [REDACTED] also states that the Petitioner's research "helped me explain my experimental observations" reflecting the "major importance of his novel contributions." Finally, he comments that he recognized the Petitioner's research in his review entitled "[REDACTED]" in which he commended the Petitioner for clarifying how beta common receptor is implicated in nitric oxide production associated with tissue repair. Dr. [REDACTED] explains that his "consistent references" to the

Petitioner's work "signify his belief" in the "major importance of [his] work within the field." Similarly, Dr. [REDACTED], assistant professor at the [REDACTED] lauded the Petitioner's research outlining [REDACTED] effect on endothelial cells and atherosclerosis. He explains that the Petitioner's results "pinpoint" agents in [REDACTED] signaling, finding that "treatment with [REDACTED] decreased oxidized low-density lipoprotein-treated macrophage lipid accumulations." He notes that the Petitioner's work has been adopted by researchers around the globe and that it has "mass cross-disciplinary applicability."

Finally, several letters attest to the positive impact of the Petitioner's studies on the effects of [REDACTED] in atherosclerosis, noting that his work has had a "major influence" on the cardiovascular medicine field, directly shaping the methods researchers employ and enabling them to validate their resulting data. Dr. [REDACTED] an assistant professor at [REDACTED], Turkey, explains that "[the Petitioner's] work on endothelial cells greatly benefits further drug developments, which provide easier more cost effective means for treating deadly diseases." He notes that the Petitioner's work has been directly used by other prominent researchers as a "cornerstone" for furthering their work in cardiovascular disease management. Similarly, Dr. [REDACTED] a professor at [REDACTED] School of Medicine provided a detailed review and commendation of the Petitioner's results on the effects of [REDACTED] on red blood cell production.

Supporting the above statements, the record includes documentation of numerous peer reviewed journal articles that the Petitioner has written or co-written and that have been extensively and consistently cited⁷ by independent experts in the field, affirming the acceptance and use of the Petitioner's work.⁸ He has also offered several letters of recommendation from independent evaluators who confirm that his work has generated a high degree of positive interest from the broader medical community. Several of these individuals testify that they have modified their protocols based upon his research and publications. Overall, the Petitioner has demonstrated through his scholarship, innovative methodologies, and record of high citations, that he has a record of success and progress in his field, and that his work has attracted the sustained interest of relevant parties at a level that renders him well positioned to advance his proposed endeavor of researching molecular treatments for cardiovascular disease.

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

Third and finally, we conclude 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. As noted above, the Petitioner holds a PhD in physiology, along with considerable experience and expertise researching the molecular

⁷ The record reflects that, at the time of filing, the Petitioner's work had been cited a total of 426 times and that many of his articles were among the top 10% in the field by respective year of publication.

⁸ The Director noted that one of the journals publishing the Petitioner's research requires a manuscript processing fee and an open access fee, making it appear that "any researcher can have his article published." On appeal, the Petitioner explains that these fees only provide free access to an author's work on the journal's website, which is a voluntary option for authors whose manuscripts have already been accepted. The Petitioner maintains that these fees have no bearing on whether an article will be accepted for publication.

foundations of cardiovascular disease. The Petitioner has documented his past success developing new experimental methods that have been recognized and utilized by other scholars in his field. Experts have consistently applauded the Petitioner's contributions relating to [REDACTED] mediation of red blood cells, along with his development of a unique cholesterol efflux method, and his work has been cited by other researchers in detailed reviews. He has also presented evidence that his methods have directly led to further substantive investigation and innovation in both the public and the private sector. For these reasons, we find the Petitioner has established that the United States will benefit from his contributions even assuming that other qualified U.S. workers were available to perform these critical functions. Therefore, we conclude 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.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established eligibility for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

Cite as *Matter of K-H-S-*, ID# 532240 (AAO June 7, 2017)