U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39123980

Date: AUG. 15, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a doctoral student and researcher in the areas of microbiology and bioinformatics, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider. We have received and will consider the Petitioner's response to our notice of intent to dismiss (NOID).[1]

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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

When a petitioner seeking a national interest waiver establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit the discretionary waiver of the job offer

[1] While we will consider the Petitioner's response to our NOID, we will not consider the new facts and evidence submitted with the response. Unlike a motion to reopen, a motion to reconsider must establish that our previous decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Petitioner's statement that our NOID gave him an opportunity to submit new evidence is incorrect, as we explicitly sought additional *explanation* of his qualification for the second and third prongs of the analytical framework in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016).

requirement under the analytical framework set forth in our precedent decision. Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. at 889, provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

In our appeal decision, we agreed with SCOPS' conclusion that the Petitioner's proposed endeavor, pursuing research in "the genetic determinants of diseases, prevalence and identification methods of foodborne pathogens, and their genetic factors contributing to antimicrobial resistance to identify novel drug targets," was of substantial merit and national importance. But we determined, contrary to SCOPS' decision, that the Petitioner had established that he was well-positioned to advance his proposed endeavor. Under the third prong of the *Dhanasar* framework, we concluded that he had not shown that, on balance, waiving the job offer requirement in his case would benefit the United States, and he therefore did not merit a national interest waiver.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), asserting that contrary to that precedent decision, our dismissal of his appeal erred in "mischaracterizing, diminishing, or ignoring much of the evidence on record, thereby deviating from the proper "preponderance of the evidence" standard."

After receiving the Petitioner's motion challenging our decision, we notified him that we intended to withdraw our previous determination that he qualified under *Dhanasar*'s second prong and dismiss his motion to reconsider. In his response, the Petitioner primarily stresses his research and scholarly accomplishments, and in particular his research productivity since he filed his petition in January 2024. He submits an updated resume, Google Scholar profile, evidence regarding posters and abstracts he presented at scientific conferences, and newly published papers in scientific journals. This new evidence also documents his efforts to secure a post-doctoral research position. But as previously noted, we do not consider new facts in a motion to reconsider. 8 C.F.R. § 103.5(a)(3). In addition, eligibility for an immigration benefit must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). Therefore, we will not consider this evidence of new facts arising after the filing of the petition in our decision.

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

I. WELL POSITIONED TO ADVANCE THE PROPOSED ENDEAVOR

We previously concluded that the Petitioner's proposed endeavor was of substantial merit and national importance. The second prong shifts the focus from the proposed endeavor to the alien. *Matter of Dhanasar*, 26 I&N Dec. 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 Petitioner holds the equivalent of a United States Doctor of Veterinary Medicine degree and is currently pursuing a Ph.D. in microbiology and bioinformatics. In responding to our NOID, the Petitioner stresses his multidisciplinary education, training, and experience in bioinformatics, genomics, molecular microbiology, and artificial intelligence, and presents evidence of several training programs which he completed quite recently. But "education, skills, and knowledge" is only a portion of one of the nonexclusive factors listed in *Dhanasar* for consideration under the second prong. *Id.* Upon review, we cannot conclude that the quality and quantity of the submitted evidence of the Petitioner's published work shows that he has a record of success in his efforts related to his proposed endeavor.

As the Petitioner states on motion, at the time of filing he had authored four papers which had been published in scientific journals or presented at scientific conferences. He emphasizes that one of those articles, published in [redacted] in 2022, was "ranked among the top 10 percent of the most highly cited articles in molecular biology." While this is accurate according to the report from Clarivate Analytics, further review of this evidence does not support the emphasis placed by the Petitioner on the number of citations to this article (6 at the time of filing) in establishing his positioning to advance his endeavor under the second prong. Notably, the report, apparently from late 2023, indicates that for papers published in the field of microbiology in 2022, those at the 50th percentile had been cited on 2 occasions, whilst those in the 1st percentile had been cited at least 21 times, and the most highly cited papers had been cited at least 231 times.[3] This data shows that citation count alone does not meaningfully separate the relative success or impact of this paper authored by the Petitioner from that of the average paper contemporaneously published in his field, and thus does not demonstrate a sufficient record of success to support his assertion that he is well positioned to advance his endeavor.

Regarding the evidence of additional citations to this and other papers published by the Petitioner, as previously stated, we will not consider the new facts and evidence submitted with his NOID response. We acknowledge that some of the additional citations (out of the most recent total of 55) in the period since the petition was filed are to the Petitioner's papers which had already been published at the time of filing. Nevertheless, the Petitioner has not established that even if we were to consider the total number of citations to his body of published research, this would be sufficient to demonstrate a record of success in related or similar efforts in his field.

[3] These figures are consistent with the following statement included in this report: "Citation frequency is highly skewed with many infrequently cited papers and relatively few highly cited papers."

Notably, the record does not substantiate the Petitioner's assertion that his overall citation rate, 36 at the time of his response to SCOPS' request for evidence, reflects a record of success or the interest of other relevant entities or individuals in his work sufficient to meet the requirements of the second prong. While the Petitioner equated this citation rate to wide recognition in the field of microbiology, he has not submitted sufficient evidence to support this assertion. He submitted partial copies of several of the papers which cited to his work, but from a quantitative view this does not expand upon the data presented in his Google Scholar profile. Also, as will be discussed below, the nature of the citations, particularly as discussed by some of the citing researchers,[4] does not support the Petitioner's assertions regarding his record of success or the interest in his work from others in the field.

The Petitioner's doctoral advisor, W-A-, describes the Petitioner's research in interspecies pathogen transmission and pathogen detection technologies in her reference letter. Regarding the latter, she states that his research has "led to the development of new technologies to facilitate detection of pathogens." The Petitioner explained in responding to SCOPS' request for evidence (RFE) that a conference presentation in 2023 and a paper published in [redacted] in 2024 (after filing of his petition) are based upon this research, and that he is working towards and addition to a [redacted] testing kit developed by W-A-'s lab called [redacted] An expert opinion letter from A-P-A- also discusses the Petitioner's research in this area, stating that his conference presentation was "received with great interest." The Petitioner submitted his updated Google Scholar profile in response to SCOPS' RFE, and this document indicates that the presentation had not been cited by other researchers, and the newly published paper had been cited on one occasion. In addition, the record does not include evidence that the Petitioner is named on any patents related to [redacted] So the record does not corroborate the statement from A-P-A- regarding the interest of other researchers in the Petitioner's work, and also does not show that this aspect of the Petitioner's work has resulted in a record of success.

Other letters from experts in the Petitioner's field focus on his published research [redacted] in Ghana, published in two separate papers in [redacted] For example, a letter from P-K-A-R- states that he cited both of these papers in his own published work, and that these citations show that the Petitioner's "findings are critical interlocutors in the discourse regarding public health optimization." In a review article published in [redacted], P-K-A-R- discusses the Petitioner's paper as the most recent of only three on the topic of [redacted] in small ruminants in Ghana. In another review article, he cites to both of the Petitioner's papers, but the partial copy submitted shows only the paper on [redacted] listed in a chart. While this evidence shows that P-K-A-R- compiled and reviewed the Petitioner's research data along with that of other researchers, it does not demonstrate a record of success when considered within the broader field of microbiology.

Another fellow researcher in the field of microbiology, I-N-S-, submitted two letters regarding his citation of the Petitioner's work concerning interspecies pathogen transmission, which was published in [redacted] and received 6 citations as previously discussed. In his initial letter, he describes the Petitioner's research in great detail, and states that the Petitioner's findings supported his assertions about human-to-cat transmission of SARS-CoV-2. In his second letter, I-N-S- expands

[4] We have reviewed and considered all of the reference and expert opinion letters in the record, including those which are not specifically mentioned in this decision.

upon this, and also notes that another research group also used the Petitioner's work to confirm their conclusions. A partial copy of the citing article written by I-N-S- and his research group shows that they did rely on the Petitioner's paper, along with several others, to support their conclusions. As for the other group's citation to the Petitioner's work, a partial copy of that citing article, published in [redacted] shows that the Petitioner's work was cited once in the introduction section. This evidence confirms that other researchers have used the Petitioner's published research findings to further their own work, but does not support its relative success in the context of the field of microbiology.

The evidence discussed above shows that while pursuing his doctoral degree, the Petitioner has published and presented research related to his proposed endeavor, and that those publications have been cited by other researchers in their own work. We recognize that research must add information to the pool of knowledge in a particular field to be accepted for publication, presentation, and academic credit, but not every individual who has performed and published original research will be found to be well positioned to advance their proposed endeavor. When making our determination under the second prong, we consider all relevant factors, including a petitioner's plan for future activities related to their proposed endeavor, progress in achieving their proposed endeavor, and the interest of other relevant parties in their work. Here, the Petitioner has not sufficiently demonstrated that his published work has, for example, served as an impetus for progress in his field, generated substantial positive discourse, or otherwise shown that it constitutes a record of success or progress in advancing his research.

With respect to his peer review activity, the Petitioner included evidence that he reviewed two manuscripts submitted to [redacted] for potential publication. We note that W-A- stated in her reference letter that peer reviewers "are chosen on the basis of their expertise to uphold strict academic standards," and emphasized the Petitioner's "repeated selection" as an indicator of his reputation in the field of microbiology. While we acknowledge that a peer reviewer must possess knowledge and skills in the field in which they conduct their reviews, the record does not include evidence regarding this journal's standards for inviting or selecting scientists to conduct peer reviews. The Petitioner has not shown that the quantity or quality of his participation in the widespread peer review process represents a record of success or is otherwise indicative that he is well positioned to advance his proposed endeavor.

Regarding the Petitioner's plans for future activities, we acknowledged in our previous decision that he had submitted a detailed description of his planned future research, including his plan to continue publishing his research in journals and at conferences. As previously noted, in response to our NOID, he submitted emails documenting his ongoing pursuit of post-doctoral research positions, which have so far been unsuccessful. Without sufficient evidence of funding or other means to support his planned research after receiving his Ph.D., the Petitioner has not established that his plan renders him well positioned to advance his proposed endeavor, or that potential employers are interested in his work.[5]

[5] The NOID response includes a letter from the [redacted] which states that the Petitioner will continue his collaboration with that entity after graduation. But the letter notes that the Petitioner "will continue to advance his skills and support his research in bioinformatics," and will also train college students in bioinformatics and machine learning. The extent to which the Petitioner would continue to pursue and publish research in pathogen detection and the genetic determinants of diseases in this role is not apparent.

We acknowledge the Petitioner's advanced STEM education in a field directly related to his proposed endeavor. But after consideration of all of the relevant factors under the second prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established that he is well positioned to advance his proposed endeavor.

II. WAIVER BENEFICIAL TO THE UNITED STATES

The third prong requires a 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 891.

In response to the NOID, the Petitioner asserts that a national interest waiver would benefit the United States in three ways. He first states that researchers in his field often work under research grants or in fellowships and "inter-institutional collaborations that are inherently time-limited, nontraditional, and sponsorship-dependent. The Petitioner asserts that the short-term nature of these research positions means that the requirement of a job offer "would impose artificial constraints on this dynamic, highly responsive, and productive career model."

Second, the Petitioner asserts that there is a national shortage of researchers with his combination of skills and "an urgent need to fill that gap." Finally, he asserts that even if there were qualified U.S. workers in microbiology and other related areas, his multidisciplinary skills and training justify a waiver of the job offer requirement.

Regarding the asserted national shortage of those with his combination of skills, such a shortage does not, by itself, satisfy the third prong. *See generally* 6 *USCIS Policy Manual* (F)(5)(D)(3), www.uscis.gov/policy-manual. Notably, the Petitioner has not shown that granting his waiver would appreciably alleviate any such shortage in biotechnology workers.

As to whether a waiver is justified even given the presence of qualified workers in his field in the United States, the Petitioner has not established that his skills, training, and experience in the areas of microbiology and bioinformatics are of such value that, on balance, they outweigh the national interest in protecting the national workforce. Unlike the petitioner in *Dhanasar*, here the Petitioner has not demonstrated a record of successful research, or that he has served in a leading role in research repeatedly funded by U.S. government agencies.

We acknowledge that the short-term nature of post-doctoral research positions and fellowships presents an obstacle in obtaining a labor certification. But per our above analysis, the Petitioner has not demonstrated that he is well positioned to advance his proposed endeavor under the second prong of the *Dhanasar* analytical framework. In addition, our precedent decision states that in order to

establish eligibility for a national interest waiver, a petitioner must go beyond showing expertise "significantly above that ordinarily encountered" in their field. *Dhanasar*, 26 I&N Dec. at 886, n. 3. Here, the Petitioner has not shown that at this point in his career he has achieved that level of expertise.

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.