U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43144720

Date: AUG. 28, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner is a microbiologist who 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 (NIW) 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).

Through its Service Center Operations (SCOPS), USCIS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but she did not merit a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion, 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. USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the First, Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals).

II. ANALYSIS

A. Eligibility for the EB-2 Classification

SCOPS determined that the Petitioner was eligible for the EB-2 classification as a member of the professions holding an advanced degree based upon her PhD in microbiology. Accordingly, the sole issue on appeal is whether the Petitioner merits an NIW of the EB-2 classification's job offer requirement as a matter of discretion.

B. National Interest Waiver

While we agree with SCOPS' ultimate determination, we are not in complete alignment with their analysis under each of *Dhanasar's* prongs.

After earning her PhD in microbiology from a U.S. university, the Petitioner served as a postdoctoral research associate and now works for a U.S. institution of higher education as a senior research associate.

1. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. 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.*

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* When we evaluate national importance, the relevant question is not the importance of the industry or profession in which the alien will work. Rather, we focus on the "the specific endeavor that the alien proposes to undertake" and we look to evidence illustrating the "potential prospective impact" of their actual proposed work. *Id.* A petitioner must demonstrate the proposed endeavor will "impact the field . . . more broadly" (*Id.* at 893) and that it has "broader implications" (*Id.* at 889). Such endeavors may have "national or even global implications within a particular field" (*Id.* at 889), "significant potential to employ U.S. workers or [have] other substantial positive economic effects" (*Id.* at 890), or has the potential to widely advance and broadly affect U.S. strategic interests (*Id.* at 892).

USCIS policy also provides that "if the evidence of record demonstrates that the person's proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance." *See generally* 6 *USCIS Policy Manual* F.5(D)(3), https://www.uscis.gov/policy-manual (citing *Matter of Dhanasar*, 26 I&N Dec. at 889–90, 892).

The Petitioner described her endeavor as follows:

> My proposed endeavor is to engineer bacteria to synthesize essential industrial chemicals from abundant and inexpensive plant-based feedstocks by combining artificial intelligence (AI) with synthetic biology and adaptive laboratory evolution.
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> . . . .
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> Biomanufacturing is a fundamental driver of the United States economy [and] has been recognized by the federal government through the nation's substantial investments into accelerating biomanufacturing technologies, with the Department of Energy . . . . Additionally, the transition away from petroleum-based feedstocks is key to decarbonizing the nation's petrochemical production, further underscoring the importance of biomanufacturing within the nation []. My research developing novel bacterial strains with engineered metabolisms is key to rapidly advancing the bio-based production of many aromatic chemicals, thereby furthering the United States' biomanufacturing capabilities whilst simultaneously addressing concerns associated with petroleum refining and the cost of importing raw materials for chemical synthesis.

Her proposed endeavor is essentially combining artificial intelligence (AI) and biology to turn plants into industrial chemicals by re-engineering bacteria.

Within the Petitioner's personal statement, she described two projects she will use to advance her proposed endeavor. For the first, she will genetically modify bacteria and improve their internal processes so they can consume plant-based materials and efficiently turn them into useful, everyday chemicals. She will achieve this through her current job at a U.S. university while working with her current partners at federally funded research and development centers owned by the U.S. Department of Energy, with the goal of applying these newly developed techniques to future research.

The second project will involve developing smart software designed to help engineer microscopic cell factories to produce useful materials like medicines, fuels, or eco-friendly plastics. She will first use AI to predict which specific proteins and biological pathways will work best and then test those AI predictions by putting them into bacteria and forcing the microbes to rapidly adapt and evolve in the lab to see if they actually improve. Combining fast AI predictions with real-world biological testing will drastically speed up the process of designing and optimizing biological manufacturing.

SCOPS decided the Petitioner's proposed endeavor had substantial merit and we agree with that determination. But they also concluded the Petitioner did not make a showing that her endeavor was of national importance. The record includes the Petitioner's curriculum vitae, academic records, published work, and documentation of numerous articles that cited to her research findings. The Petitioner also offered reference letters describing her research expertise and her past record of success in microbial evolution. The letters identify specific examples of how the Petitioner's research progress has affected the field and she offered probative evidence to corroborate those examples. The Petitioner has explained why the benefits of her proposed endeavor extend beyond her employer or its clients. We therefore withdraw SCOPS' adverse decision here and we conclude that by establishing her

proposed endeavor's substantial merit and national importance, the Petitioner meets the first prong of the *Dhanasar* framework.

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: (1) their education, skills, knowledge and record of success in related or similar efforts; (2) a model or plan for future activities; (3) any progress towards achieving the proposed endeavor; and (4) the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

We do not agree with SCOPS that the Petitioner has adequately demonstrated that she is well positioned to advance the proposed endeavor.

As it relates to the Petitioner's education, while her Ph.D. renders her eligible for the underlying visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance the proposed endeavor.[1] 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. We look to a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor and education is merely one factor among many that may contribute to such a finding.

She also has six published articles, four of which during her time as a doctoral student. On appeal, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the microbiology field. The Petitioner claimed that "two of her papers appeared among the top 10% of the most-cited papers in Microbiology" for their respective years. However, she did not indicate whether she factored in any self-citations in determining these percentile rankings or those from her inner circle of researchers with whom she is collaborating. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

Further, citation frequency which is quantitative in nature does not reveal the reasons for the citations, which involve a qualitative analysis. In other words, a high citation number might show that others in the field have noticed the Petitioner's work, but it does not confirm that her work has impacted or advanced the field of in such a way that renders her as being well positioned. Evaluating the qualitative nature of the citations to the Petitioner's work, the record contains partial copies of articles that cited

[1] "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. competitive or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." *See generally* 6 *USCIS Policy Manual*, *supra*, F.5(D)(4). A degree in and of itself, however, is not a sufficient basis to determine that a person is well positioned to advance the proposed endeavor. *Id.*

to her papers. These articles include the text of the citation, which the Petitioner asserts highlight the impact of her own work.

While we agree with the Petitioner that these citations indicate some degree of interest in her research from her colleagues and peers in the field, this evidence is not sufficient to demonstrate a level of interest or a record of research success that renders her well positioned. We note each of the articles is a review article and not original research. So citations to her work are more of a representation of awareness of the work than they are a functional reliance. The articles in the record refer to her work indicating the authors cataloged her work to provide background context and the Petitioner has not demonstrated that these review articles could not have been produced without the foundational work of her cited paper. This falls short of showing that she is well positioned to advance the proposed endeavor.

Additionally, the Petitioner submitted an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers."

While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with respect to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation."

The Petitioner also asserts that she has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. 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.

As it relates to funding, we acknowledge the Petitioner's statements but she did not show that she was responsible for securing the funding. In contrast, Dr. Dhanasar provided evidence establishing that he "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." *Id.* at 893, n.11. This demonstrated that not only were there several high-level grants, but also that Dr. Dhanasar was instrumental in those projects, which assisted him in establishing he was well positioned to advance his endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research, 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 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 supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her work constitutes a record of success or progress rendering her well positioned to advance her proposed endeavor.

We note she did not provide evidence from the university demonstrating it employs her and in what capacity. She only provided a job offer letter with a proposed start date that preceded the petition's filing date, but no material confirming it actually hired her and we will not presume the Petitioner's claimed employment from that material. The Petitioner's statements and this material are not adequate to demonstrate the university actually employs her, nor does it satisfy her burden of proof. *See Matter of G-C-I-*, 29 I&N Dec. 176, 178 (BIA 2025).

The Petitioner briefly addresses her progress towards achieving the proposed endeavor in the appeal making passing reference to some of the letters in the record. Two of the letters are not in the record under the exhibit she identifies in the appeal brief and we were unable to locate them based on her exhibit lists she provided in the initial filing or in the request for evidence response. For the two letters that are present, they describe ongoing work relating to her proposed endeavor. And as it relates to interest in her work, above we addressed several aspects she raises in the appeal brief that generally do not weigh in her favor. For example, her publication record and the absence of evidence showing she was responsible for securing funding.

As the Petitioner has not demonstrated that she is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework and we withdraw SCOPS contrary determination.

3. Whether on Balance a Waiver is Beneficial

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. *Id.* at 890–91. In performing this analysis, we stated USCIS may evaluate a non-exhaustive list of factors to include:

1. 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;
2. Whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and
3. Whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.*

The Petitioner indicates that although she will advance her proposed endeavor through employment at a major U.S. university:

> [M]y proposed endeavor is my overarching goal for my research career, and it will not change regardless of where I am employed. Therefore, while I will engage in employment opportunities that are aligned with the goals of my proposed endeavor, my ability to pursue my proposed endeavor is in no way limited to any one employer or role.

We ultimately conclude that, on balance, the Petitioner has not established that it would be beneficial to the United States to waive the job offer and labor certification requirements. But before proceeding under this prong, we reiterate the effect of granting a waiver of the job offer requirement means the proposed endeavor is of such importance that we are willing to forgo the protections for U.S. workers that Congress placed in the statute through the labor certification process. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i); 20 C.F.R. § 656.1(a) (requiring U.S. employers to test the labor market in the geographic area where the job offer is located to establish that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position, and that hiring the foreign worker in the offered position will not adversely affect the wages and working conditions of similarly employed U.S. workers).

a. Impracticality of Job Offer or Labor Certification

Regarding the first factor, we consider 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.[2]

The Petitioner did not address this factor in the appeal. Any ground of eligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

b. Benefit Despite Other Qualified U.S. Workers

Moving to the second factor, we evaluate whether the Petitioner has demonstrated that, even assuming other qualified U.S. workers are available, the United States would still benefit from her contributions. The Petitioner generally relies on highlighting her "academic achievements and her publication and citation record that documents her growing influence in the field."

But the incremental benefit of the Petitioner conducting research does not outweigh the statutorily mandated interest in protecting the labor market. This tends to undermine the Petitioner's claim that were she unable to receive a waiver of the job offer requirement, the work wouldn't happen as she provided evidence for the record that other researchers in multiple Department of Energy-run national laboratories are also working on similar projects. These elements make it much less likely that the waiver is necessary for the United States to secure the national benefit interests. And unlike the alien in the *Dhanasar* decision, the Petitioner here has not demonstrated a consistent record of highly

[2] In the *Dhanasar* decision under this element, we offered examples of an alien "with unique knowledge or skills that are not easily articulated in a labor certification," or a "self-employed inventor, when advancing an endeavor on his or her own." *Matter of Dhanasar*, 26 I&N Dec. at 891–92 n.10.

successful research, or that she has served in a leading role in research repeatedly funded by U.S. government agencies.

The Petitioner has not substantiated that, even assuming other qualified U.S. workers are available, the United States would still benefit from her contributions at a level that would warrant waiving the labor certification requirements.

c. Sufficient Urgency to Forgo the Labor Certification Process

For the third factor, we look to whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. Of particular interest is whether the endeavor has an immediate, time-sensitive component that justifies bypassing a labor certification filing.

Her claims consist of encouraging domestic manufacturing, reducing American dependence on foreign supply chains, establishing United States' dominance in AI technology, and aligning with national security interests.

First, she plans on utilizing AI as part of her proposed endeavor, but does not propose to work on AI in an effort to improve it such as developing adversary-resistant frontier models, making more efficient use of semiconductors, automating threat vulnerability detection, etc. Second, while the research she is performing is nationally important, the fact that others are also performing similar studies tends to diminish her remaining arguments that it is urgent that USCIS waive the labor certification process for her to perform the work. Further, she did not offer an estimate of the amount of funding required for the projects.

The Petitioner has not offered a persuasive argument that her research projects are likely to sufficiently contribute to an urgent national interest and she has not shown that she warrants a favorable determination for this third factor.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). 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.