U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37481475

Date: APR. 2, 2025

Appeal of Nebraska 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 for the Beneficiary 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, but that it 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 pursuant to 8 C.F.R. § 103.3.

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 qualify for the underlying EB-2 visa classification, a beneficiary 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 demonstrates the beneficiary's 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. 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 discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

Id.

II. ANALYSIS

The Director found that the Beneficiary 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. For the reasons discussed below, we conclude the Petitioner has not established the Beneficiary's eligibility for a national interest waiver under the third prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

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.* We agree with the Director's determination that the proposed endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The Petitioner indicated that the Beneficiary's proposed endeavor is to continue working as a toxicologist in the field of assessment, providing the public with knowledge on health and safety risks. More specifically, the Beneficiary will evaluate existing research, analyze the potential for harm caused by a chemical, and estimate how the public might be exposed. The Petitioner further explained that the Beneficiary's work will protect public health from harmful chemicals in consumer goods, workplaces, and the environment, ensuring the safety of products, regulations, and waste management practices.

The record includes letters of support discussing how the Beneficiary's proposed endeavor for the Petitioner stands to advance environmental science, public health, and regulatory policy in the United States aimed at mitigating exposure to hazardous chemicals. For instance, M-D-,[2] President and Director of Science for the petitioning entity, discusses how the Beneficiary is focusing on per- and polyfluoroalkyl substances (PFAS), which are synthetic/man-made chemicals that are used in many products, including food packaging, clothing, cosmetics, firefighting foam, non-stick cookware, and stain-resistant textiles. Said chemicals, as noted by M-D-, are considered "forever chemicals" due to their persistence in the human body and the environment, and also because they do not breakdown easily. The Petitioner further explains that the Beneficiary's proposed endeavor will be to procure the most relevant and up-to-date human health risk assessment articles on PFAS substances from research groups, academic institutions, toxicology organizations, and national and international health authorities and agencies with expertise on PFAS substances; put the scientific information into a more publicly available and accessible form by writing literature in non-technical language; and disseminate the literature review on the risk assessment of PFAS substances to the scientific community and U.S.

[2] Initials are used to protect the privacy of the individual.

public through various social media and news platforms, peer-reviewed toxicology journals, public campaigns and community engagement.

As another example, C-A-, a gastroenterologist/hepatologist, emphasized the importance of the Beneficiary's proposed endeavor, stating that he is "peculiarly interested in [the Beneficiary's] publications centered around per- and polyfluorinated substances (PFAS)" because these are products that are used daily but "pose significant health risks due to their toxicity and ability to bioaccumulate and have been implicated in cases of intestinal inflammation and ulcerative colitis." Dr. N-O-, a hematologist oncologist, states that the Beneficiary's research in the toxicology world is relevant as "we start to focus on the roles that chemicals/pesticides, certain preservatives might play in some health conditions and especially what causal role they might play in cancer incidence." Additionally, the Petitioner submitted documentation indicating that the benefits of the Beneficiary's proposed research offer broad implications as the results are disseminated to others in the field through scholarly journals, reports, presentations, and chapters in toxicological reference books. Accordingly, we withdraw the Director's determination that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *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 record supports the Director's determination that the evidence is sufficient to demonstrate that the Beneficiary is well positioned to advance his proposed research under *Dhanasar*'s second prong.

C. Whether on Balance a Waiver is Beneficial

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. The Director determined that the Petitioner had not established 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. On appeal, counsel for the Petitioner asserts that obtaining a labor certification for the Beneficiary would be impractical, "unduly restrictive, and unnecessary."

On appeal the Petitioner has not established that the Beneficiary's knowledge and skills could not be articulated on a labor certification. While the Petitioner proposes that the Beneficiary will be performing functions as a toxicologist in the field of assessment, providing the public with knowledge on health and safety risks, these factors do not outweigh the benefits inherent in the labor certification process. Nor has the Petitioner shown that the Beneficiary presents a significant benefit to the United States through his proposed endeavor or that his prospective work would serve an urgent national interest. The Petitioner therefore has not established on appeal that the third prong of the *Dhanasar* framework has been met.

In sum, the evidence does not indicate that the Beneficiary offers contributions of such value 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 not established the Beneficiary's eligibility for a national interest waiver under the third prong of the *Dhanasar* analytical framework.

ORDER: The appeal is dismissed.