U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37600086

Date: APR. 07, 2025

Appeal of Texas 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 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 Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for 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 establish eligibility for a national interest waiver, petitioners must 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. Section 203(b)(2)(B)(i) of the Act. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

II. ANALYSIS

Regarding the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's initial statement, provided with his petition, stated that his "proposed endeavor is to elucidate the genetic basis of antibiotic resistance and biofilm formation in bacteria in order to inform the development of targeted therapies, support the pharmaceutical industry, and improve outcomes for patients with drug-resistant infections." He indicated that he would pursue his endeavor while continuing the pursuit of his Ph.D. in molecular and cell biology from the University of [redacted]

As it relates to substantial merit, the endeavor's merit may be shown in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar*, 26 I&N Dec. at 889. The Director determined the Petitioner established the substantial merit, but not the national importance, of the proposed endeavor. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner had not established, by a preponderance of the evidence, that his specific proposed endeavor was of national importance.

The record contains copies of the Petitioner's peer-reviewed publications, his citation record, and articles from the World Health Organization and the Centers for Disease Control, among others, which discuss the importance of his field. The Petitioner offered letters of support from N-D-, F-B-I-, N-S-, and V-N-[2], three of which he described as both letters of recommendation and independent advisory opinions. These letters discuss the authors' specific experience working with the Petitioner in the past, and knowledge of his past research, but do not discuss knowledge or details of his specific proposed endeavor. As noted by the Director, the Petitioner's knowledge, skills, and abilities relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

On appeal, the Petitioner contends that the Director erred in concluding that he had not provided sufficient evidence to illustrate the national importance of his proposed endeavor, and that the Director imposed a requirement of "letters from government agencies or quasi-governmental agencies" expressing that his "proposed endeavor promises to advance a critical and emerging technology or is otherwise important for purposes of maintaining the United States' technological prominence." The Petitioner contends that the Director's use of this language imposed a requirement not found in the implementing regulations or *Dhanasar*, and "although such letters may serve as helpful evidence, they are not required to demonstrate the national importance" of his endeavor. In our review, we conclude that the Director did not deny the petition solely for lacking these types of letters; however, as stated by the Petitioner in his brief, the Director indicated the type of evidence that would support the Petitioner's proposed endeavor, as the Director concluded that the other evidence of record was insufficient to establish the endeavor's national importance.

[2] We use initials to protect the identity of individuals.

The Petitioner also contends that his endeavor falls within a STEM (science, technology, engineering, or mathematics) profession. With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[3] Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.[4] On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.[5] Here, the Petitioner has not shown that his endeavor aims to advance STEM technologies and research or has broad implications rather than providing his limited professional services by working within a STEM profession.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the work. *Id.* at 889. Here, the Petitioner did not demonstrate how his research would largely influence the field and rise to the level of national importance. In *Dhanasar*, we determined 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. The record does not show through supporting documentation how his endeavor sufficiently extends beyond his research, to impact the field or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner contends that the evidence he has provided should be considered sufficient, in the aggregate, to establish that his proposed endeavor is of national importance by a preponderance of the evidence. However, for the reasons outlined above, we disagree. Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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[3] *See generally* 5 USCIS Policy Manual D.2, https://www.uscis.gov/policymanual.
[4] *Id.*
[5] *Id.*
[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).