U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30663122

Date: APR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a statistics researcher, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not demonstrate his eligibility for a national interest waiver. The matter is now before us on appeal. 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, 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. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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 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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. In denying the petition, the Director did not determine whether the Petitioner qualified for the EB-2 classification as an advanced degree professional or as an individual of exceptional ability. However, in the request for evidence (RFE) the Director did conclude that the Petitioner qualified as an advanced degree professional based on him holding a master's degree in statistics from [redacted] As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that he is ineligible for a national interest waiver, as a matter of discretion. Therefore, we need not remand the matter to the Director to clarify the basis for the determination in the RFE that the Petitioner is eligible for the EB-2 classification as an advanced degree professional. *Id.* Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his EB-2 eligibility. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

B. National Interest Waiver

The Petitioner stated that his proposed endeavor was to "develop Predictive Models for predictive analyses to develop probabilistic and generalized linear models." The Petitioner indicated he was earning his doctorate from [redacted] teaching statistics, and researching, editing, and finalizing his dissertation. The Petitioner indicated that he planned to "develop predictive models and analyses of variance that serve to defend data against cyber-attacks ranging from criminal data breaches of proprietary networks to major distributed denial of service attacks instigated by hostile foreign governments." The Petitioner also asserted that his research in statistical and data science models could have use in "finance, life-sciences, genetics, medical sciences, meteorological sciences, banking, marketing, anthropology, and other disciplines." In addition, he stated that his proposed endeavor would have national importance since it would help researchers to better understand "the impact of pesticides and other pollutants in the environment and inform policy makers

[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 to be discretionary in nature).

of the consequences of allowing the continued use of harmful chemicals," impacting agricultural and food security.

In support of these assertions, the Petitioner submitted several support letters, including one from a professor from the department of statistical science at [redacted] stating that the Petitioner's "work is a boon to the study of the relationship between predicted variables and predictive variables, which has major implications for areas including national security and cybersecurity." Likewise, the Petitioner provided support letter from a professor of mathematical sciences at [redacted] opining that the Petitioner was a trusted resource amongst his peers due to the citations to his work, stating that his work has "specific utility in studying ecology and biodiversity, such as calculating the migration patterns of specific species of birds and the movement patterns of marine life," underpinning "a great many scientific endeavors."

The Director later issued a request for evidence (RFE) stating the Petitioner demonstrated that his proposed work as a statistics researcher in the United States had substantial merit. However, the Director concluded that the Petitioner did not establish that his proposed endeavor would have national importance. The Director stated that the evidence did not demonstrate that his work would impact his field more broadly and have national or even global implications, have significant potential to employ U.S. workers, or offer substantial positive economic effects for the nation. As such, the Director requested that the Petitioner provide documentary evidence to support his assertions as to national importance, including evidence to demonstrate that his proposed endeavor would have global or national implications within a field, have significant potential to employ U.S. workers, have substantial economic effects, or broadly enhance societal welfare or cultural or artistic enrichment.

In response, the Petitioner asserted that his proposed endeavor was "more impactful than *Dhanasar's*," asserting that it "provid[ed] him with an effective method for ensuring continuous funding." He also emphasized that he intended to focus on the endeavor full-time. The Petitioner further stated that his probabilistic modeling would enable decision-makers to calculate "the distribution of pesticide exposure in a given area, as well as identify regions that are particularly vulnerable and simulating the impacts of agricultural practices." In addition, the Petitioner pointed to the "considerable use and investment" in predictive modeling by the U.S. government, including the Department of Defense (DOD), Naval Postgraduate School (NPS), the Environmental Protection Agency (EPA), and the Department of Energy (DOE). The Petitioner submitted an article reflecting how his proposed endeavor was integral to solving major problems throughout the nation, including crime reduction, veteran homelessness, Medicare savings, amongst others. Further, the Petitioner asserted that his proposed endeavor was supported by "significant funding," pointing to a recent DOE initiative to provide up to $30 million in funding for advanced research in machine learning (MI) and artificial intelligence (AI).

The Petitioner also provided additional support letters, including one from a professor of epidemiology at [redacted] discussing how his development of better probabilistic and generalized linear models would facilitate the production of better AI and ML systems, as well as advancements in epidemiology, finance, business, and several other fields. Similarly, the Petitioner submitted a support letter from a professor from [redacted] opining that the Petitioner proposed endeavor would improve "farming methods by substantially contributing to the development of new quantitative strategies…[and] optimize hearty, robust plant growth" and improve farmers' ability to

forecast crop yields. Lastly, the Petitioner provided a support letter from a senior mathematical statistician from the [redacted] at the U.S. Department of Health & Human Services indicating that the Petitioner's proposed endeavor involved technology that "must be prioritized in order to promote U.S. technological leadership." He further stated that the Petitioner's machine learning algorithms based on statistical inference "are enhancing physicians' abilities to differentiate between…viruses and diagnose medical conditions more quickly and with greater precision."

In denying the petition, the Director concluded that the Petitioner did not demonstrate the national importance of his proposed endeavor. The Director pointed to the specific nature of the proposed endeavor reflected in *Dhanasar*, as compared to that offered by the Petitioner, and indicated that an occupational shortage in a field was not relevant to demonstrating national importance.

On appeal, the Petitioner contends that the Director erred in focusing on an occupational shortage, noting that this was not asserted as a basis for the national importance of his proposed endeavor. The Petitioner again points to government sources, including that from the DOD, U.S. Navy, EPA, DOE, and Centers for Disease Control and Prevention, emphasizing the potential national impact of statistical and data science models in potentially reducing U.S. Air Force aircraft downtime, generating up to $1.5 billion in Medicare savings, deploying DOD medical resources, predicting the future location of outbreaks, and the monitoring of water quality by the EPA. The Petitioner again contends that his proposed endeavor is more impactful that than set forth in *Dhanasar*, "providing him with an effective method for ensuring continuous funding" and that he has "firmly established that he intends to focus on his proposed endeavor full-time."

Even though the Director incorrectly focused on an asserted occupational shortage and did not sufficiently discuss the support letters submitted by the Petitioner, it is not clear what remedy would be appropriate beyond this appeal process. The Petitioner has been afforded the opportunity to supplement the record on appeal as to the issue of national importance, therefore it would serve no useful purpose to remand this matter to simply afford the Petitioner another opportunity to supplement the record with new evidence. As such, we will analyze, de novo, whether the Petitioner has demonstrated the national importance of his 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 "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

As a preliminary matter, the Petitioner has submitted conflicting assertions that leave uncertainty as to the potential prospective impact of his proposed endeavor. For instance, the Petitioner stated in support of the petition that under an approved petition he intended to continue to work teaching courses

at his university and researching, editing, and finalizing his dissertation, further noting that he would likely receive his doctorate in May 2024, more than one year after the date the petition was filed. Meanwhile, in apparent conflict, the Petitioner repeatedly emphasized in response to the RFE and on appeal that he would be pursuing his proposed endeavor full-time and that it would provide him with "a method for continuous funding." However, there is no indication that the Petitioner will be working on his proposed endeavor full-time or that he has received any funding based on his statements regarding his work as an assistant professor and doctoral candidate. Further, the Petitioner's focus on potential funding by the U.S. government for his research appears misplaced, including his reference to a recent DOE initiative to provide up to $30 million in funding for advanced research in machine learning (MI) and artificial intelligence (AI), as it does not appear he has received any funding in this, or any, field. As such, the Petitioner's assertions on appeal regarding his pursuit of the endeavor fulltime and with "continuous funding" with respect to demonstrating national importance are not convincing. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also* Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

In addition, the Petitioner asserted potential prospective impacts in a wide array of potential fields leaving question as to whether he would have a national impact on any of them. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work, but the specific endeavor that the foreign national proposes to undertake. For instance, the Petitioner asserted, and submitted support letters reflecting, that his proposed work would have a potential prospective national impact on agricultural and food security, national and cyber security, ecology and biodiversity (including the movement of birds and marine life), DOD aircraft downtime, MI and AI, crime reduction, Medicare costs, epidemiology, medical diagnoses, EPA water quality monitoring, as well as a number of other fields and industries. However, the provided support letters, each asserting prospective impacts in varying fields, provide little objective support that the Petitioner's specific proposed endeavor will likely have a potential prospective national impact in any field or industry.

For instance, the Petitioner stated with respect to cyber security that approximately 15 million data records had been compromised from July to September 2022 and that the MI technology industry was estimated at value of $10 billion, but there is little supporting evidence to substantiate that his research on statistical and data science models is likely to have a national impact on these large fields and industries, let alone the numerous others he asserted. Although the Petitioner submitted evidence that his publications had been cited by others in the field, there is little evidence to support that he would be doing national-level work related to any of the several fields and industries he and those in his support letters discuss. In sum, the Petitioner has provided little supporting evidence to substantiate that his proposed work statistical and data science models in the United States would have a potential prospective impact on a national level.

To illustrate, the Petitioner compares his proposed endeavor to *Dhanasar* and asserts that his proposed endeavor would be "more impactful," thereby demonstrating the national importance of his proposed endeavor. However, in *Dhanasar*, the petitioner was conducting research and development in the field of air and space propulsion, more specifically, hypersonic propulsion systems involving speeds above Mach 5, and he had developed a novel method for accurately calculating hypersonic airflow. The petitioner in *Dhanasar* further submitted evidence reflecting that he would continue his research into designing and developing propulsion systems in nano-satellites, rocket-propelled ballistic missiles, and single-stage-to-orbit vehicles and substantial supporting evidence to support how his continued research would assist the United States in maintaining its advantage over other nations in hypersonic flight, including supporting documentation reflecting his receipt of funding from DOD for his research. *Dhanasar*, 26 I&N Dec. at 891-2.

In comparison, the Petitioner has not provided this level of focus or documentation to support the national impact of his proposed endeavor, asserting that his proposed research could potentially impact a seemingly limitless array of fields and industries and he provides little objective support for the prospective national impact in any, including little evidence to support any specific government initiatives directly related to his work. For example, one of the submitted support letters asserts that the Petitioner's work with statistical and data science models would lead to up to $1.5 billion in Medicare savings but this expert provides little objective support for this far-reaching conclusion. We may, in our discretion, use advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor would rise to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner's proposed endeavor stands to have a potential prospective impact on a national level. As such, the Petitioner has not demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. at 516.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.