U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30628157

Date: APR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher using biotechnology tools to advance cancer therapeutics, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the Petitioner qualified for classification as a member of the professions holding an advanced degree, but the record did not reflect they had 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 sustain 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director found that the Petitioner qualified 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 of a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a "scientist, biology" at [redacted] in [redacted] Massachusetts developing and executing cellular assays to characterize novel hetero-bifunctional molecules whilst also utilizing cell line engineering and cellular technology to investigate the platform and novel targets. The Petitioner proposed to endeavor to continue research into tumorigenesis and developing new technologies for cancer therapies utilizing biological assays they created to facilitate cancer drug and biomarker screening, characterization, and development.

For the reasons discussed below, we conclude the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner provided sufficient evidence to establish the substantially meritorious nature of their proposed endeavor but did not conclude that the proposed endeavor rose to a level of national importance.[1] The Petitioner's submission contained probative letters of support from experts in the fields of biotechnology and cancer research describing the Petitioner's experience, work, and proposed endeavor in personalized and meaningful detail, and a detailed statement from the Petitioner's current employer describing the Petitioner's endeavor, their development of assays, and its potential prospective impact on eventual advances in the treatment of cancer utilizing phosphorylation inducing chimeric small molecules (PHICS). Additionally, the Petitioner submitted documentation indicating the benefit of their proposed research as broader implications for the field, as the results were and are intended to continue being disseminated to others in the field through scientific journals. Moreover, the Petitioner's endeavor involves critical and emerging biotechnology in their research.[2] The Petitioner's assertions are supported by material, relevant, and probative evidence demonstrating both the substantial merit and national importance of their proposed research.

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[1] We, like the Petitioner, view the Director's decision with a measure of concern. In their decision, the Director determined that the Petitioner's proposed endeavor was of substantial merit. And for the second part of their decision regarding the first prong of the *Dhanasar* framework, the Director concluded that the Petitioner did not demonstrate their proposed endeavor's national importance. However, the Director's analysis of national importance relied upon elements from the third prong of the framework, in which we determine whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. For example, immediately after concluding that the proposed endeavor was not nationally important, the Director stated that the Petitioner had not established that "it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification," and went on to list several third prong factors from the precedent decision. Later in the decision, under the bulleted heading "National importance," the Director initially (and correctly) explained that the focus of a national importance analysis under the *Dhanasar* framework was the specific proposed endeavor, not the field or industry in which a petitioner proposed to work. However, they then went on to conduct an analysis of whether the Petitioner was well positioned to advance their proposed endeavor, which falls under the second prong of the framework. This is especially concerning considering the Director's request for evidence, within which the Director stated that the evidence of the Petitioner's education and experience was sufficient to establish that they were well positioned to advance their endeavor, and thus met the second prong of the *Dhanasar* framework, before reaching the opposite conclusion in their decision. An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Although the Director's decision did not sufficiently or comprehensively explain the reasons behind their conclusion that the Petitioner's proposed endeavor is not nationally important, we conclude upon de novo review as described in this decision that the record contains material, relevant, and probative evidence demonstrating the Petitioner's eligibility for a favorable act of discretion granting a national interest waiver of the job offer, and thus the requirement of a labor certification.

[2] "Many proposed endeavors that aim to advance STEM (science, technology, engineering, or mathematics) technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. since and technology interest, but also have sufficiently broad potential implications to demonstrate national importance." *See generally* 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual.

So, they have demonstrated both the substantial merit and the national importance of their 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 Petitioner. The record includes the Petitioner's curriculum vitae, their academic records, published and presented work, reference letters, and documentation of numerous articles that cited to their research findings.[3] Specifically, the Petitioner offered reference letters describing, in meaningful detail, their expertise in assay development, biotechnology, cell growth regulation, selection of appropriate biological candidates for further study, and their past record of success in their current and other related fields. As corroborating documentation regarding the significance of their work, the Petitioner provided evidence showing that their published work has been frequently cited by independent researchers, and that the rate at which their work has been cited is high relative to others in the field. The Petitioner's experience and expertise as a researcher at the intersection of biotechnology, oncology, and cancer therapeutics, published articles, citation evidence, progress in their field, and professional progression at reputed research institutions position them well to advance their proposed endeavor. Additionally, the record contains evidence of substantial capital infusions funding the entity within which the Petitioner will perform their endeavor. So, the Petitioner has demonstrated that they satisfy the second prong of the *Dhanasar* framework.

C. Whether On Balance a Waiver is Beneficial

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.[4] As a researcher with an advanced degree and with experience as a research scientist at institutions of higher education of repute and in industry, the Petitioner possesses considerable education, experience, and expertise in analysis of biological materials at a cellular level to study attributes and behavior under set conditions with an aim to influence outcomes. The record also demonstrates the potential for widespread medical benefits associated with the Petitioner's most recent research. In addition, the Petitioner has documented their past successes in advancing novel research. They have also demonstrated the significance of their proposed work advancing the treatments and therapeutic outcomes to reduce morbidity and mortality. So, we conclude that the Petitioner offers contributions of such value that, on balance, they would benefit the United States even if other qualified U.S. workers are available. The Petitioner, therefore, meets the third prong of the *Dhanasar* framework.

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[3] "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*, F.5(D)(2), https://www.uscis.gov/policy-manual.

[4] When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor: (1) The person possesses an advanced STEM degree, particularly a Ph.D.; (2) The person will be engaged in work furthering a critical and emerging technology of other STEM area important to U.S. competitiveness; and (3) The person is well positioned to advance the proposed STEM endeavor of national importance. *See generally USCIS Policy Manual*, *supra*, at F.5(D)(2).

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude they have established that they are eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.