U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32369485

Date: AUG. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 that the record did not establish that the Petitioner is well positioned to advance the proposed endeavor or that it would be beneficial to waive the requirements of a job offer. 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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. 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;
- 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 Petitioner is an electrical engineer. He earned bachelor's degree in engineering at [redacted] in 2011. He submitted documentation from his current and past employers verifying that he has 12 years of subsequent experience as an electrical engineer. The Director concluded that he is eligible as a member of the professions holding an advanced degree. Upon de novo review, we agree. Therefore, the sole issue on appeal is whether he is eligible for, and merits as a matter of discretion, a national interest waiver. The Director determined that the Petitioner demonstrated that his proposed endeavor has both substantial merit and national importance, but that he did not demonstrate that he is well positioned to advance his endeavor or that on balance, waiving the job offer requirement would benefit the United States.

For the reasons discussed below, we conclude that 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. 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. Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to continue his work as an electrical engineer, specifically in the development of nuclear and fusion energy, upgrading transmission voltages, and retrofitting aged power plants.

The Director determined that the Petitioner provided sufficient evidence to meet this prong of the Dhanasar framework. Our review of the Petitioner's submissions, highlight the broader benefit and implications of the Petitioner's work, which has the potential to positively impact the national and/or global energy supply, safeguard against power plant failures, and assist in the transition to cleaner energy. We therefore agree with the Director's determination that the Petitioner has demonstrated both the substantial merit and national importance of his proposed endeavor.

[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).

B. 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: 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. Matter of Dhanasar, 26 I&N Dec. at 890.

The Director determined that the Petitioner did not establish that he is well positioned to advance his endeavor, determining that the letters of interest he received from potential employers alone was insufficient. However, the Petitioner submitted several other documents that the Director did not address in their decision. Following our de novo review, we find that the Petitioner is well positioned to advance his proposed endeavor.

As previously noted, the Petitioner earned a bachelor's degree in engineering in 2011, and since that time has worked as an engineer in the field. He is currently working at [redacted] an international collaborative project designed to prove the feasibility of fusion as a large-scale and carbon-free source of energy. He presented several letters from work associates and other professionals in his field attesting to the Petitioner's skills and contributions to past projects. For example, the letter from Dr. [redacted] conferred that Petitioner has a critical role in the design, construction, and operation of the [redacted] which is the machine that contains the fusion reaction and then distributes the energy created. He also presented his employment records, professional licenses, copies of a performance award he received from his prior employer, and past papers he composed. Considering the totality of the evidence, we conclude that the Petitioner is well positioned to advance his proposed endeavor.

C. 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. In performing this analysis, we may evaluate factors such as: 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; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. Matter of Dhanasar, 26 I&N Dec. at 890-91.

In the analysis concerning the third prong, the Director determined the record did not demonstrate the proposed endeavor would be beneficial to the United States but did not analyze any of the evidence in the record in coming to that conclusion.

When evaluating the third prong, USCIS considers it a strong positive factor if the Petitioner possesses an advanced STEM degree, will be engaged in furthering a critical and emerging technology, and is

well positioned to advance the proposed STEM endeavor. See 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual. As an engineer with a bachelor's degree and over a decade of experience, the Petitioner possesses considerable experience in energy production and distribution. Additionally, the Petitioner's documentation of his past successes, shown through articles, letters of recommendation from others in his field, and his employment records, demonstrate that his proposed endeavor could significantly benefit the energy industry and contribute to the world's efforts towards cleaner, more renewable energy.

Based on the Petitioner's track record and the significance of his proposed work to advance the U.S. energy field, we conclude that he offers contributions of such value that, on balance, would benefit the United States even if other qualified U.S. workers are available, and are therefore sufficient to justify a waiver of the EB-2 classification's job offer requirement. The Petitioner, therefore, meets the third prong of the Dhanasar framework.

III. CONCLUSION

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

ORDER: The appeal is sustained.