U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33378475

Date: AUG. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a post-doctoral researcher, 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 did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. 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. 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 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 Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] We agree with the Director's determination. The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Director determined that the Petitioner demonstrated his proposed endeavor has substantial merit and is of national importance, as required by the first prong of the Dhanasar analytical framework. However, the Director determined that the Petitioner did not establish that he is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong, or 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 under D*hanasar's* third prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that he is well-positioned to advance his proposed research under *Dhanasar's* second prong or that a waiver of the labor certification would be in the national interest.[3]

At the time of filing, the Petitioner conducted post-doctoral research at the [redacted] in Germany. He proposes to pursue a post-doctoral researcher position at a U.S. university so that he can continue his research on emotion detection and recognition in human-robot interactions and publish his work in conference materials and journals in his field.[4] He states that his research would focus on "developing cutting-edge algorithms, models, and methodologies for emotion-aware interactions between humans and social robots in order to improve the ability of computers to recognize and process human emotion and facilitate design of advanced user interfaces for human-robot interactions." His research would include "the development of cognitive models for

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

[2] To demonstrate he is an advanced degree professional, the Petitioner submitted his certificate for a doctor of engineering science from [redacted] in Germany in 2023, a certificate from the university attesting to the Petitioner's dates of attendance for his doctoral research work, and an academic evaluation. The record demonstrates that he attained the foreign equivalent to a U.S. doctorate. See 8 C.F.R. § 204.5(k)(3).

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

[4] In addition to his research work, the Petitioner also intends to teach with a department of computer science at a U.S. university. In Dhanasar, we discussed how teaching would not impact a field broadly in a manner which rises to national importance. The benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. Similar to Dhanasar, the Petitioner's teaching activities at a U.S. university do not rise to the level of national importance. Therefore, our analysis is limited to the Petitioner's proposed endeavor to conduct research with a U.S. university.

social robots based on visual, verbal, and paralinguistic cues" and facilitate "customized user support via advanced [human-robot interaction] interfaces." By enhancing human-robot interactions, he indicates his research has the potential to improve industries, such as healthcare, customer service, education, manufacturing, defense, and agriculture. The record includes recommendation letters from the Petitioner's former professors explaining the Petitioner's doctoral research and indicating his research helps advance computer science and artificial intelligence. We agree with the Director that the Petitioner's proposed endeavor has substantial merit and is of national importance.

The second Dhanasar prong shifts the focus from the proposed endeavor to the Petitioner. To determine whether an individual is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to 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. at 890. The Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner is well-positioned to advance the proposed endeavor of research in his field.

On appeal, the Petitioner claims that the Director erred in the decision with incorrect conclusions of law or fact and abused their discretion in analyzing his petition. He maintains that the Director did not evaluate all the relevant evidence, including citations mentioned in his statement which show that his work has influenced researchers in his field and has added to the development of social robots. By subjecting him to an incorrect heightened standard of review by requiring he demonstrate a level of influence in his field, the Petitioner argues this heightened standard is contrary to the Dhanasar decision which states, "our adjudication experience in the years . . . has revealed that there are some talented individuals for whom past achievements are not necessarily the best or only predictor of future success."

The record includes the Petitioner's curriculum vitae, academic records for his doctorate of engineering science, his conference publications, articles citing to his research work, his Google Scholar citation record, a portion of a book he authored, letters of recommendation, and acknowledgements of his review of peer conference papers. He specifically highlights his educational credentials, citation history from his research, and his evaluation of work of his peers to support how well he is positioned to advance his proposed endeavor.

The Petitioner has the foreign equivalent of a U.S. doctorate having received a doctorate in engineering science from [redacted] in Germany in 2023. We acknowledge that the Petitioner has an advanced degree in a science, technology, engineering, or mathematics (STEM) field which is tied to his proposed work to further develop human-robot interaction interfaces. The Petitioner stresses that his work is related to an area of critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor under

the second Dhanasar prong.[5] See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual.

We recognize the importance of progress in STEM fields and the role of persons with advanced STEM degrees, particularly with a Ph.D., in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security. Id. We agree with the Petitioner that we consider his Ph.D. in a STEM field tied to his proposed endeavor in developing human-machine interface to be an especially positive factor for establishing the second Dhanasar prong. However, when considered with other evidence in the record, the Petitioner has not shown that he is well-positioned to advance his proposed endeavor as contemplated by Dhanasar. In addition to education, we look to a variety of factors in determining whether a petitioner is well-positioned to advance their proposed endeavor and education is one factor among many that may contribute to such a finding. Id.

In Dhanasar, the petitioner held three advanced degrees, including a Ph.D., tied to his proposed research which had significant implications for U.S. national security and competitiveness. To determine whether the petitioner was well-positioned to continue to advance his proposed endeavor, we also favorably considered the significance of his research which had been corroborated by evidence as having peer and government interest; the significance of his role in his research projects; consistent funding from government agencies of his research projects; and his position with a U.S. university where he intended to conduct his proposed research work. Matter of Dhanasar, 26 I&N Dec. at 892-93.

The Petitioner argues his record of success is evidenced by his published and presented research having several "notable" citations by researchers who complimented his work and which show his research serves as an influence for progress in the field of social robotics. The Petitioner maintains that his statement details his successes in robotics research, including his work "to train neural networks to extract subtle perceptual features . . ., as well as his accomplishments in optimizing and fine-tuning machine-learning models to function in dynamic interaction scenarios." He provides further detailed descriptions of his work outlined in his statement and maintains that the Director's decision failed to meaningfully address his statement. Arguing his research's citation history shows "considerably more success in disseminating his research" than the petitioner in Dhanasar, the Petitioner submitted on appeal evidence of Dr. Dhanasar's citation history. The Petitioner emphasizes that the evidence shows he had 38 citations at the time of filing while Dr. Dhanasar only had 23 citations at the time of his filing.

Our review of the Petitioner's citation history in Google Scholar indicates that most of his citations are self-citations or citations by his co-authors.[6] While the Petitioner provided evidence of a few independent publications citing his work, such independent citations are limited. Moreover, the Petitioner did not submit evidence that his citation record is comparatively high in his field or that his work and proposed endeavor have otherwise garnered the interest of other researchers in his field.

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[5] "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 competitiveness 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, supra, at F.5(D)(2).

[6] See information from https://scholar.google.com accessed on August 21, 2024.

Accordingly, the Petitioner has not shown that his published work has attracted a sufficient level of interest from relevant parties or otherwise renders him well-positioned to advance his proposed endeavor.

In addition, the Petitioner claims to have a record of success through his peer review of others in his field. In support of his peer review work, the Petitioner submitted two emails acknowledging his peer review work. However, it is not clear from the record the extent of his peer review or whether his level of participation in the peer review process represented a record of success in his field or is otherwise an indication that he is well-positioned to advance his proposed endeavor.

Next, the Petitioner argues that like the petitioner in Dhanasar, he demonstrated government interest in his research. He stresses that his research "involves the advancement of artificial intelligence, human-machine interface, and autonomous systems and robots, all areas of considerable government interest" and which are considered "critical" technologies. However, in Dhanasar, the petitioner showed government interest in his research by providing evidence that he obtained government funding supporting his research. Whereas here, the Petitioner claims that his research is involved in an area of government interest, but he has not shown that the government has an interest in his research work. For instance, the Petitioner did not offer evidence showing that he has received funding or other support for his research proposals or future projects. In Dhanasar, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." Id. at 893, n.11. Without further evidence, the Petitioner has not demonstrated government interest in his work.

Next, the Petitioner claims his statement sufficiently detailed his plans for carrying out his proposed endeavor, including his description of three projects and his intent to seek a post-doctoral research position with a U.S. university, such as the Social Robotics Lab at Yale University. Although employment is not a requirement for a national interest waiver, the Petitioner has not submitted evidence of interest from Yale University or another U.S. university. Where a petitioner does not intend to be self-employed, we consider job offers or communications with prospective employers, while not required, relevant to show the circumstances or capacity in which the petitioner intends to carry out the proposed endeavor and the feasibility of that plan. See generally 6 USCIS Policy Manual, supra, at F.5(D)(1) n. 53. While we consider the Petitioner's plan for conducting his research work at Yale University or another U.S. university useful in understanding his proposed endeavor, he has not provided evidence relevant to show the feasibility of his plan. Without sufficient evidence demonstrating the means or financial support to undertake his proposed research in the United States, the Petitioner has not demonstrated that his plan for future activities renders him well-positioned to advance the proposed endeavor.

Lastly, arguing his research work has the interest of relevant entities and individuals in his field, the Petitioner points to two letters of recommendation from his colleagues with knowledge of his research and who attest to his qualifications. The colleagues are university professors who explain having worked with the Petitioner and detail his research projects. They claim that the Petitioner's research has influenced computer scientists because his work has been published in conference articles and in book chapters. While the letters generally express that the Petitioner's research has made "significant advances" in his field and "further the progress of social robots," they do not sufficiently detail how the Petitioner's specific research work has influenced their field of human-robot interaction interface.

Although the letters provide details of his research work and general praise for his research "making groundbreaking advances in the development of robots that interact with humans," they do not provide details or examples of how the Petitioner's specific work has influenced their research or others in their field so that we could evaluate whether it represents a record of success or progress rendering the Petitioner well-positioned to advance his proposed endeavor. We must consider the weight of each piece of evidence and determine whether the aggregate is enough to meet the second Dhanasar prong. Here, the limited evidence of interest is insufficient to meet the Petitioner's burden. In sum, while the Petitioner has conducted productive research that has been useful to some of his colleagues, he has not demonstrated sufficient progress or success in his field, or interest in his work from relevant parties, to show that he is well-positioned to advance his proposed research endeavor.

Here, although the record demonstrates that the Petitioner conducted research during and after his doctorate studies, he has not demonstrated that his academic credentials and this research work render him well-positioned to advance his proposed endeavor. Whilst we recognize that research must add information to the pool of knowledge in some way to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well-positioned to advance their proposed endeavor. The Petitioner here has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in human-robots interaction research. Here, the limited evidence of interest is insufficient to meet the Petitioner's burden. As the Petitioner has not demonstrated that he is well-positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the Dhanasar framework.

Because the documentation in the record does not sufficiently establish the Petitioner is well-positioned to advance the proposed endeavor as required by the second prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility under the third prong of the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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).

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the Dhanasar analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.