U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32497651

Date: AUG. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a climate scientist, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not 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 dismiss 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. 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:

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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. EB-2 CLASSIFICATION

The Director determined that the Petitioner is a member of the professions holding an advanced degree. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). 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. Id.

The Petitioner received his education in Nigeria. According to the Petitioner's credential evaluation of his Nigerian degrees, he obtained a two-year degree majoring in biochemistry in 2007, a five-year degree majoring in meteorology in 2011 equivalent to a U.S. bachelor's degree, a two-year degree in meteorology in 2015 equivalent to a U.S. master's degree, and a three-year degree in meteorology and climate science in 2019 equivalent to a U.S. doctorate degree. In support of the evaluation, the Petitioner submitted only a copy of his doctorate diploma and a letter from the institution that issued the diploma attesting to his attendance, the degree awarded, the date of the degree, and identifying his thesis title as [redacted] The Petitioner has not submitted an official academic record demonstrating he has an advanced degree, as required under 8 CFR § 204.5(k)(3)(i). The Petitioner's submissions do not amount to an official academic record evidencing, for example, the names of the institutions that issued his degrees, the years he attended his degree programs, whether he attended full time studies. As a result, we withdraw the Director's determination that the Petitioner established he is an advanced degree professional.

The Petitioner does not assert that he is an individual of exceptional ability in the sciences, arts, or business in the record below or on appeal. We therefore consider the issue to be waived. See, e.g., Matter of O-R-E-, 428 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Because the Petitioner has not established he is a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business, the Petitioner has not demonstrated his eligibility for the underlying EB-2 visa classification.

III. NATIONAL INTEREST WAIVER

In support of his national interest waiver petition, the Petitioner submitted documents including his resume, two recommendation letters, abstracts from his publications, notable publications that cited to his research, articles discussing climate change, his citation record, and his work as a peer-reviewer. After considering the evidence, the Director determined that the Petitioner did not meet the three Dhanasar prongs to merit a discretionary waiver of the job offer requirement "in the national interest." Based on our de novo review, we conclude the Petitioner established his proposed endeavor has

substantial merit and national importance, satisfying *Dhanasar's* prong one, but did not demonstrate he is well-positioned to advance his proposed endeavor to establish *Dhanasar's* second prong.

In the initial filing, the Petitioner stated that his proposed endeavor is to research, develop, and evaluate state-of-the-art global and regional climate models for simulating, past, present, and future climate and weather characteristics to inform decision-making processes for urban planning and climate change mitigation and adaptation efforts. According to his statement, his planned research topics include investigation of global monsoon variability and aerosol-cloud-radiation interactions under different greenhouse gas emissions and shared socioeconomic scenarios. In response to the Director's request for evidence, the Petitioner submitted a second proposed endeavor statement clarifying that he will pursue the scientific understanding and actionable solutions in the realm of climate modeling with a particular emphasis on its impact within the United States. According to the Petitioner's second statement, he plans on contributing to the scientific community's understanding of North American climate by "leveraging the Weather Research and Forecasting (WRF) model, a regional climate model developed at the National Center for Atmospheric Research."[2]

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. Matter of Dhanasar, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. Id. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Id.

The Director did not determine whether the Petitioner's proposed endeavor has substantial merit. Our precedent decision in Dhanasar noted that an endeavor's substantial merit may be established without evidence of economic impact, providing the examples of endeavors relating to research, pure science, and the furtherance of human knowledge. Id. Here, the Petitioner proposes to research, develop, and evaluate global and regional climate models to mitigate the impact of climate change and assist in adaptive efforts. Because the Petitioner aims to advance scientific knowledge, he has established the substantial merit of his proposed endeavor.

The Director determined that the Petitioner's proposed endeavor was not of national importance. The Director repeated the Petitioner's description of his proposed endeavor and found it does not stand to

[2] The Petitioner's second endeavor statement also claimed that he would work on allocating resources to "support low-carbon, net-zero, climate-resilient sustainable development in the United States." However, the Petitioner did not initially indicate any intention to work on allocating resources in his initial filing, nor does he explain what resources he would allocate or how allocating resources is related to his initial proposed endeavor of researching, evaluating, and developing improved climate models that would impact the United States. We consider this amendment to his endeavor a material change to the petition. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1), (12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, a petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. Matter of Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1988). Accordingly, we will only address on appeal the Petitioner's initial proposed endeavor and the additional details regarding his proposed endeavor included in his second endeavor statement.

impact the broader field, have significant potential to employ U.S. workers or enhance societal welfare or cultural or artistic enrichment as contemplated by Dhanasar. We disagree.

In the underlying record, the Petitioner submitted recommendation letters from two meteorologists holding senior positions in academia, describing the importance of having models more accurately and efficiently predict the weather's complex causes and effects and other climate factors in mitigating climate change. In one of the letters, the author discussed how two other climate research teams published articles in 2020 and 2021 emphasizing the benefits of improved global circulation models for predicting climate and weather events and cited to the Petitioner's research in support of more accurate modeling. The Petitioner also included articles describing the effects of climate change but, more relevantly, he highlighted two that mentioned the use of climate models. One article noted how climate mapping can build resilience in communities by helping them plan for climate risks and another article relied on a climate model's prediction of increased rainfall in parts of the United States to propose reforms in crop insurance.

On appeal, the Petitioner asserts that his proposed endeavor involves tackling climate change through developing and improving Science, Technology, Engineering, or Mathematics (STEM) technologies as they relate to climate science, which is of immense value to the United States. The Petitioner cites to the USCIS policy manual and submits a White House Memorandum on Research and Development Priorities for fiscal year 2024 documenting the government's interest in prioritizing research and development investments that advance the understanding of climate change. We agree that USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in STEM areas important to U.S. competitiveness. See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. The Petitioner has demonstrated that his specific endeavor of improving climate models aligns with the White House's priority of improving technology relevant to climate change and would have national implications within the field of climate science. Looking at the evidence in its totality, the Petitioner has sufficiently demonstrated by a preponderance of the evidence that his proposed endeavor stands to impact the broader field of climate science and is of national importance.

The Petitioner has established the substantial merit and national importance of his proposed endeavor, and meets the first prong of the Dhanasar framework. We therefore withdraw the Director's determination to the contrary on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The second Dhanasar prong shifts the focus from the proposed endeavor to the individual. Matter of Dhanasar, 26 I&N Dec. at 890. Under this prong, to determine whether petitioners 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. Id.

According to the Director, the Petitioner has not shown how his research findings have influenced the field or industry beyond adding to the general pool of knowledge and has not otherwise shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned

to advance his proposed endeavor. On appeal the Petitioner claims the Director did not properly evaluate the evidence in the record.

Upon de novo review, we conclude the Petitioner has not established that he is well positioned to advance his proposed endeavor of researching, developing, and evaluating climate models to inform decision-making processes for urban planning and climate change mitigation and adaptation efforts with a particular emphasis on its impact within the United States. As discussed below, the Petitioner has not established that he has developed climate models in West Africa to establish a record of success in related or similar efforts, that his specific knowledge and research of West African weather conditions translates to an ability to advance his proposed endeavor of developing and evaluating weather models affecting the United States, or that he has gained the interest of potential customers, users, investors, or other relevant entities or individuals in his proposed endeavor. Further, the Petitioner's evidence does not show that there are potential customers, users, investors, or other relevant government or private entities or individuals in the United States who would be interested in his proposed endeavor.

On appeal the Petitioner asserts that his education, research, and work history clearly evidence his skills, knowledge, and record of success, and thereby establishes that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education, skills, knowledge, and record of success are factors among many that may contribute to such a finding. Id. at 890. We reviewed the Petitioner's education above and as noted, the Petitioner has not corroborated his academic evaluation with his academic record. However, even if he had, he has not shown that his academic accomplishments, research, and professional experience focused on or otherwise sufficiently prepared him for his proposed endeavor, which includes developing global and regional climate models impacting the United States. We acknowledge that the Petitioner's research and related publications have contributed to scientific understanding of climate in West Africa.[3] However, while research adds information to the pool of knowledge in some way in order 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. Here, the Petitioner's thesis research involved forecasting models simulating West African monsoons, and as part of his research, he evaluated climate models affecting West Africa and he is currently working on developing a model for that region. The record of his past and current research does not reflect that the Petitioner has already developed weather models. With respect to the Petitioner's work history, the record evidences that he is currently a climate change adaptation specialist for the [redacted] in the Ivory Coast, and has been a lecturer at a university, a consultant for a meteorological organization, a scientist, and a climate advisor. His duties in his positions as reflected in the record similarly do not evidence the Petitioner's development of climate models. As a result, the record does not demonstrate that the Petitioner actually developed climate models as part of his education, thesis work, research,

[3] The Petitioner provided abstracts of his published articles, which include eleven peer-reviewed journal articles, six of which list the Petitioner as lead author, and two separate book chapters first authored by him, all discussing climate research with respect to West Africa. He included his Google Scholar profile indicating his citation rate being over 300. He also submitted a webpage printout from [redacted] featuring a story of the Petitioner and discussing his research on the development of a West African earth system model.

or employment to demonstrate a record of success or that he has made progress towards achieving or is otherwise well positioned to advance his proposed endeavor in the United States.

The Petitioner further asserts on appeal that his research has been cited by scientists all over the world, and he singled out several articles of importance and provided their abstracts in the record below. Of the articles that did not focus on climate research in West Africa, only one discussed weather in the U.S. Midwest. However, the research team that cited to the Petitioner's research only noted that he had demonstrated the reliability of a certain weather scheme in West Africa. Another article focused on weather in Iran and cited to the Petitioner's research to evidence weather projection was used in his study, another discussed weather in China, and cited to the Petitioner's work to say the Petitioner studied climate extremes in Africa, another discussed the Petitioner's work as it relates to East Africa, and another analyzing weather in the tropics acknowledged deficiencies in local modeling found by the Petitioner's research. While his citation history evidences that the Petitioner's research has added information to climate science in some way, it does not sufficiently establish that his research has prepared him to advance his proposed endeavor.

On appeal, the Petitioner also asserts the Director did not fully assess the letters he submitted from two qualified experts in the field, who discussed his research and highlighted his accomplishments in climate research. One letter, dated February 2023, is authored by a former colleague and project scientist at the [redacted] in England. The letter is highly complementary, serves to highlight the Petitioner's achievements with respect to evaluating models specific to West Africa, and asserts the Petitioner's work has made headway in areas of climate science that would affect national efforts to mitigate climate change. The second recommendation letter is authored by an assistant professor in the [redacted] at the [redacted] in Morocco. The author, whose letter is also dated February 2023, stated he is familiar with the Petitioner's work and has cited to the Petitioner's research in his own research and evaluation of Ugandan precipitation models. The author of the letter explained that the Petitioner's notable project investigated the effects of aerosol on the monsoon system in West Africa. However, the letters do not provide examples or an explanation of how the Petitioner's research has facilitated the development of, or that he has developed, climate models that would have impact here in the United States. As a result, the recommendation letters do not sufficiently support that the Petitioner is well-positioned to advance his proposed endeavor.

Similarly, the Petitioner also points to his selection as a peer-reviewer for publications as evidence of his reputation in the scientific community as a renowned leading expert in climate science and interest in his work. While he provided emails evidencing his feedback on the work of another researcher and gratitude expressed by others in the field for his response and comments, he did not provide evidence of reviewing publications relevant to his proposed endeavor. The Petitioner has not detailed how or why he was selected as reviewer or that he is recognized for expertise relevant to his proposed endeavor. Without more, the Petitioner has not demonstrated that his review of articles for publication reflects a level of interest in his work from relevant parties sufficient to meet Dhanasar's second prong.

Further, in our determination that Dhanasar was well positioned under the second prong, we also weighed "the sustained interest of and funding from government entities" for his proposed endeavor. Id. at 893. We noted that, in making such a determination, we consider factors including interest of

potential customers, users, investors, or other relevant entities or individuals in the endeavor. Id. at 890. In his proposed endeavor statement, the Petitioner stated he envisions working as a project scientist at the National Center for Atmospheric Research in Colorado and remains open to the prospect of roles in academic institutions. However, the Petitioner did not provide evidence that the National Center for Atmospheric Research, or any other academic institution, has expressed interest in employing him. Rather, the Petitioner asserts his evidence, such as his research, funding for some of his research, his citation record, and his letters of support, sufficiently documents the interest of relevant parties in his research, particularly his colleagues who have utilized and benefitted from his work. However, while this evidence establishes that the Petitioner is a very capable and respected climate scientist and researcher who has conducted, and published climate research with respect to West Africa that is well cited, it does not establish that he has obtained or generated interest in his proposed endeavor from potential customers, users, investors, or other relevant government or private entities or individuals.

Finally, the Petitioner asserts he has provided a model plan for his proposed endeavor, which was not discussed in the Director's second prong analysis. In describing his proposed model or plan for future activities, the Petitioner's initial endeavor statement said his planned research topics include investigation of global monsoon variability and aerosol-cloud-radiation interactions under different greenhouse gas emissions and shared socioeconomic scenarios. In addition, according to the Petitioner's second endeavor statement, he plans on contributing to the scientific community's understanding of North American climate by "leveraging" the WRF model. The Petitioner, however, did not explain how his planned research or "leveraging" of the WRF model relates to his proposed endeavor, whether any potential government or private sector employers expressed interest in the planned research and investigation, or what steps were taken to advance his proposed plans.

We have examined the factors set forth in Dhanasar, including the Petitioner's education, skills, knowledge; progress towards achieving the goals of the proposed endeavor; a model or plan for future activities; interest of potential customers, users, investors, or other relevant entities or individuals. Id. at 890. Based on our de novo review, the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor and the Petitioner has not established that he satisfies the second prong of the Dhanasar framework.

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. Matter of Dhanasar, 26 I&N Dec. 884. However, as the Petitioner has not established that he meets the second prong of the Dhanasar framework, the Petitioner has not shown that he is eligible for and otherwise merits a national interest waiver, and we therefore reserve the Petitioner's arguments with respect to this issue. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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

The Petitioner has not established his eligibility for the underlying EB-2 classification and has not shown that he is eligible for and otherwise merits a national interest waiver of that classification's job offer requirement.

ORDER: The appeal is dismissed.