U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34829012

Date: DEC. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 that the Petitioner qualified for EB-2 classification, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest**.** On appeal, the Petitioner submits additional documentation and asserts that he is eligible for the benefit sought. 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 a national interest waiver, a petitioner must first show eligibility 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 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

[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).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

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

As evidence that his proposed research has substantial merit and national importance, the Petitioner indicated that he intended to continue research to determine state-of-the-art biomarkers for predicting the risk of breast cancer precursors in order to enhance the accuracy and timeliness of the diagnosis of the disease. The record includes letters of support discussing how the Petitioner's proposed work stands to advance breast cancer research in the United States. For instance, Dr. [redacted] professor emerita at the [redacted] states that the Petitioner's approach, "which diverges from traditional age-based treatment guidelines, proposes a more personalized method by targeting treatments based on unique tumor characteristics," which "not only improves patient outcomes, but it lays the groundwork for a transformation in current therapeutic practices." The Petitioner's research, as noted by Dr. [redacted] directly "contributes to a more efficient allocation of healthcare resources," and enables "the development of new drugs targeting high-risk patients." Dr. [redacted] further details that by focusing on identifying biomarkers for early detection of breast cancer precursors, the Petitioner's work "significantly enhances the accuracy and timeliness of diagnosis," which is "crucial as breast cancer remains the most commonly diagnosed cancer among women, with the United States among the top countries for breast cancer rates and mortality." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through medical journals, publications, and conferences.

As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research in the field of biomedicine, he has established that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

We withdraw the Director's conclusion that the Petitioner did not establish he meets *Dhanasar's* second prong. The second prong shifts the focus from the proposed endeavor to the Petitioner in determining whether the individual is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The Petitioner possesses a medical degree from the [redacted] and is currently pursuing his Ph.D. at the same institution. USCIS considers an advanced degree, particularly an advanced degree in a Science, Technology, Engineering, and Mathematics (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. 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* 6

USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. The record also includes the Petitioner's curriculum vitae; published and presented work; peer review activity; evidence of publications, abstracts, speaking engagements, and citatory evidence; funding and scholarship documentation; and letters confirming the Petitioner's past and present employment. In addition, the Petitioner offered reference letters describing his expertise in biomedicine and his past record of success in the research field. Several expert references identify specific examples of how the Petitioner's research progress relating to biomedicine, surgical pathology, and cytopathology has affected his field. As corroborating documentation regarding the significance of his work, the Petitioner provided evidence showing that his published work has been frequently cited by independent researchers. Accordingly, the Petitioner has demonstrated that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

Furthermore, we withdraw the Director's determination that the Petitioner did not establish he meets *Dhanasar's* third prong. As explained above, 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.[2] As a researcher with a medical degree who is currently pursuing a Ph.D., the Petitioner possesses considerable experience and expertise in his research field. The record also demonstrates the widespread benefits associated with research progress in the early detection and treatment of breast cancer. In addition, the Petitioner has documented his past successes. Based on the Petitioner's track record of successful research and the significance of his proposed work to advance U.S. medical interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. 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 he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

[2] When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

See USCIS Policy Manual, *supra*, at F.5(D)(2).