U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34888383

Date: DEC. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner intends to be a research scientist in the field of experimental nuclear physics and 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 record did not establish that the Petitioner was well-positioned to advance the proposed endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. 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.

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 doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

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. *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 Director determined that the Petitioner is 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. However, 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.

We note that the Petitioner earned two Masters of Science degrees, one in physics and another in radiation and health physics, is pursuing doctoral studies, and is working as a research assistant at [redacted]. We acknowledge that the Petitioner won an award for Best Poster Presentation at the [redacted] has published work and given presentations. However, for the reasons discussed below, we conclude that the Petitioner has not 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.

In his initial filing, the Petitioner failed to provide specific insight as to what he intended to do in the field of physics. However, in response to the request for evidence, the Petitioner proposed "to continue to study the nuclear structure of atomic nuclei produced through different nuclear reactions, using gamma-ray spectroscopy and beta-decay techniques." Moreover, the Petitioner stated, "[o]ne of the goals of my proposed endeavor is to observe the excited states in nuclei and measure their properties like excitation energy, lifetime, and modes of decay with their energies." He further explained that the ". . . measured properties of excited states in nuclei determine how and which nuclei are used in applications for diagnostic imaging, radiotherapy, forensics, nuclear power, and weapons."

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

The Director determined that the Petitioner provided sufficient evidence to meet the first prong of the *Dhanasar* framework. Our review of the Petitioner's submissions highlights the broader benefit and implications of the Petitioner's work. The Petitioner's study involves the observation and detection of radioactive decay which though harmful, can, with the right energy, be used to diagnose and treat cancer. We therefore agree with the Director's determination that the Petitioner has demonstrated both the substantial merit and national importance of his proposed endeavor.

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. Following our de novo review, we agree. In support of the petition, the Petitioner presented letters from other professionals in his field attesting to his skills and the importance of his past research. For example, the letter from Dr. [redacted] Professor of Physics at the [redacted] wrote in his recommendation letter: "[The Petitioner] has already made a significant contribution to the field of Nuclear Physics. His research work on the high spin states of Cobalt and Nickel isotopes has expanded what is known about these nuclides in terms of gamma rays and energy levels. He shared the results of his work with peers during the summer school where we first met, and also during the [redacted] (2023) which brought together experts in the field from all over the world. . . . His research discoveries in the Cobalt and Nickel isotopes will help in understanding the fundamentals interactions that govern [matter in] the universe." However, we note that the letters are scant and do not provide sufficient examples indicating that the Petitioner's work is impactful, or otherwise constitutes a record of success in his field.

The Petitioner argues that the importance and value of his work may be demonstrated by his new research being included in the [redacted].[2] On appeal, the Petitioner argues that scientists from all over the world rely on the [redacted] database and they will be using the latest scientific information about nickel and cobalt that is available at the [redacted] because of the Petitioner's discoveries. Thus, he proffers, future research relying on his discoveries will use information from the [redacted] without necessarily citing his research paper and giving him credit for the discovery. However, the Petitioner did not offer supporting evidence to corroborate his assertion that that his work would not be credited if used in the future, especially where the [redacted] website provides guidance about how to reference the information contained in its database. Additionally, he argues that his current citation record is not an accurate reflection of his impact in the field. We note that the Petitioner has written or co-written 5 publications from 2022 to 2023, along with other researchers. Moreover, the record does not demonstrate that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet

[2] The [redacted] collects, evaluates, and disseminates important nuclear physics data for basic nuclear research and applied nuclear technologies.

Dhanasar's second prong. While the record demonstrates that the Petitioner has conducted, published and presented research during his graduate studies and professional career, it has not shown his work renders him well positioned to advance his proposed endeavor. Moreover, while 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 his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts or generation of interest among relevant parties supports such a finding. *Id.* at 890. Overall, the Petitioner has not sufficiently demonstrated that his published and presented work has served to propel the field of experimental nuclear physics. On appeal, the Petitioner asserts that he has received funding under the National Science Foundation to conduct his research. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded granted proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. However, the record indicates that in this case, the grant recipient was [redacted] and the Petitioner is not listed as the primary contact. Considering the totality of the evidence, we conclude that the Petitioner is not well positioned to advance his proposed endeavor under the second prong of *Dhanasar*.

C. Whether on Balance a Waiver is Beneficial

The Director determined the record did not demonstrate the proposed endeavor would be beneficial to the United States; we agree. 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 factors 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. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.