U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36409136

Date: FEB. 05, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a laboratory supervisor/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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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. 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. 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.* If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 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,[2] 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 qualifies as a member of the professions holding an advanced degree. The remaining 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.

On the Form I-140 (I-140), Immigrant Petition for Alien Workers, the Petitioner stated that his occupation is a laboratory supervisor and that he intended to research and develop new drugs for optimizing immune responses and treating immune related diseases. In a statement submitted with the I-140, the Petitioner contended that he has been specializing in the advanced research of immunology for over ten years. He asserted that his research focused on translational and clinical bio-medical research, therapeutics discovery, and its development. He currently worked as the laboratory supervisor at [redacted] bio-pharmaceutical company famous for its frontier medical research and innovations."

The Petitioner additionally submitted recommendation letters from professional associates, copies of his published articles, information about the journals who published his work, a copy of his Google Scholar profile, documents regarding his participation at conferences, and awards he has received. A letter from Dr. [redacted] at the [redacted] described the Petitioner as having contributed significant knowledge to the function and malfunction of the immune system, in particular a better understanding of the function of T-cells in initiating or regulating a protective immune response, which has moved the field of developmental immunology forward. Dr. [redacted] stated that the findings from the Petitioner's studies "undoubtedly influence the improvement of anti-viral and anti-cancer vaccines" and "led to new therapeutic targets for immune therapy curing or

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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

preventing autoimmune diseases." Dr. [redacted] a cancer research company, stated that the Petitioner's participation in a research project with this company facilitated its success and that several projects he worked on achieved milestones faster than expected. The letter from Dr. [redacted] went on to attest that the Petitioner's research dealt with finding new methods by which to treat cancer and that his work had been crucial to advancing treatment modalities. Dr. [redacted] a pharmaceutical company, discussed the Petitioner's work to study the dysregulation of T cells that could provide new insights to prevent or treat inflammatory bowel diseases. This letter also stated that the Petitioner's work had translational value to scholars working toward developing drugs for manipulating cell population in diseases and that Dr. [redacted] looked forward to his future work. A letter from Dr. [redacted] the Petitioner's current employer, the Petitioner's contributions to T cell biology research indicated that he would continue to advance in the field of immunology.

In denying the petition, the Director determined that the Petitioner's proposed endeavor met requirements according to the first *Dhanasar* prong for substantial merit and national importance. However, the Director concluded that the Petitioner had not established that he was well-positioned to advance his proposed endeavor of conducting research under the second *Dhanasar* prong. In doing so, the Director noted that not all individuals who have performed original research will be well-positioned to advance their proposed research. The Director concluded that the evidence submitted by the Petitioner, including as supplemented after a request for additional evidence, did not establish that the Petitioner's research had been influential beyond adding to the general pool of knowledge. The Director also found no evidence of the Petitioner's progress toward achieving the proposed endeavor. Finally, the Director determined that, on balance, the Petitioner had not met the third *Dhanasar* prong's requirements to show that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

On appeal, the Petitioner argues his eligibility for the national interest waiver and submits a new letter along with copies of previously-submitted evidence. The Petitioner generally claims that the Director did not appropriately weigh the evidence in the record regarding whether he is well-positioned to advance his endeavor. He asserts that the Director did not recognize his academic achievements as recognized by his peer scholars. The Petitioner further contends that he submitted a letter from Dr. [redacted] at the [redacted] that demonstrates by a preponderance of the evidence that he has a record of progress and has received inquiries regarding collaboration from prominent researchers. Additionally, he states that because his publications have been cited more than 100 times, his work has provided knowledge basis for developing novel theories. He also disagrees with the Director's finding that his participation in conferences and symposiums did not show intellectual influence.

As described by the Petitioner in his initial petition, his endeavor consists of researching and developing new drugs for optimizing immune responses and treating immune related diseases.[3] The

[3] Because the Petitioner is ineligible for the requested waiver for the reasons discussed here, we need not reach, and therefore reserve the matter of whether his proposed endeavor is of national importance under *Dhanasar*'s first prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). However, our review of the record indicates that the Petitioner has not demonstrated the national importance of his proposed endeavor. Should the Petitioner file a motion for us to reconsider or reopen this decision, it should address this eligibility criterion.

second prong shifts the focus from the proposed endeavor to the Petitioner. *Id.* at 890. To determine whether a Petitioner 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.* For the reasons discussed below, the Petitioner has submitted insufficient evidence to demonstrate that he is well-positioned to advance his proposed endeavor under *Dhanasar*'s second prong.

As an initial matter, the Petitioner has not elaborated a model or plan for his future activities, nor has he sufficiently demonstrated interest in collaboration from relevant entities in the United States. He has also not submitted documentation from any organization or employer identifying interest in the specific research projects he intends to pursue in the future. Despite the Petitioner's contention on appeal that the letter from Dr. [redacted] demonstrates interest from future collaborators, the Petitioner does not address the Director's observation regarding the absence in the record of independent documentary evidence of these inquiries. Additionally, the record does not show that the Petitioner has received funding for his any future projects. In *Dhanasar*, the record established that the petitioner had "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 sufficient evidence demonstrating the means by which the Petitioner plans to undertake his immunological research in the United States, he has not shown that he has a plan for future activities renders him well-positioned to advance his proposed endeavor.

The Petitioner argues on appeal that his academic achievements have been recognized by his peer scholars and that this demonstrates that he is well-positioned to advance his endeavor. However, the Petitioner has not sufficiently shown a track record of past success or progress in achieving the proposed endeavor, specifically research leading to the development of new drugs. While we recognize that research necessarily adds information to the pool of knowledge by virtue of its acceptance 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. Although the support letters in the record praise the Petitioner's contributions to the field of immunology and some state that his research could contribute to the development of novel therapies or treatment in the future, this is not sufficient to show that he is well-positioned to develop new drugs, therapies, or treatments.

As the record is insufficient to show that the Petitioner is well-positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. We therefore conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.