U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28963575

Date: FEB 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an engineer and technologist, 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 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. 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;

[1] See also Poursina v. USC1S, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- 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 record reflects that determination. The Petitioner earned a master of science in computer information systems from [redacted] in May 2022 and previous to that earned a master of science in engineering from [redacted] in [redacted] Massachusetts in 2017. His intended occupation as a researcher in the field of aviation technology qualifies as a profession.

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.

A. Substantial Merit and National Importance

For the first prong of the Dhanasar framework, the Director determined that the Petitioner's endeavor has substantial merit and is of national importance. We agree with the Director's determination.

With his petition, the Petitioner submitted his statement indicating he is an engineer and technologist who plans to research "unmanned aerial vehicles, commonly known as drones, typically in quadcopter configurations." His stated focus would be "on two areas that are critical to the United States, [a]erodynamics of drones and experimentation of their applications to civilian task and industries." (emphasis omitted). He also mentioned that he was working on publishing his research related to quadcopters, and later "plans to collaborate with experts in the robotics and transportation sector to continue exploring ways and applying [his] unique skills toward discovering newer ways that drones can perform a particular function in any industry."

In response to a request for evidence (RFE) notice, the Petitioner provided more details stating,

> Through the continuation of my work, I will investigate how to optimize flight time and speeds during mapping exercises such as aerial mapping of construction sites to achieve high-resolution data collection and real-time interpretation for identifying faults during construction. I will also investigate how [unmanned aerial vehicles (UAVs)] can be applied in different industries such as the [e]nvironmental industry to identify contaminants in water bodies and map the lateral extent and depth of the contaminant. In addition, the experience would benefit the United States by investigating how drones would behave in different atmosphere [sic] such as on the moon and Mars, as NASA and other private space exploration companies are researching ways to use drones to understand the geology, topography, and life on various planets.

The Petitioner has shown that his proposed endeavor to work as a researcher focused on the aerodynamics of UAVs and their application to civilian task and industries has substantial merit.

The Petitioner also demonstrated his proposed endeavor has national importance. As explained in the Petitioner's statement, limited data is available on the flight characteristics of UAWs. He maintains that research providing a better understanding of their capabilities and limitations would be advantageous to building more efficient drones for use in varying industries, including agriculture, healthcare, military, security, and construction.

The Petitioner provided supporting documentation relating to his previous research work with UAVs, including his graduate research papers and letters from his professors and colleagues. A letter from [redacted] associate professor with the Department of Mechanical Engineering at [redacted], explains that during graduate school, the Petitioner was involved in research in the aerodynamics field, including wind tunnel and wind force tests, and their effects on quadcopters. [redacted] explains the importance of drones stating, "Drones are becoming integral to society in many fields ranging from security and healthcare to agriculture. They serve many purposes such as delivery, aerial mapping, and can potentially be used for disaster response. As these devices proliferate, little information is available regarding their flight capabilities." He further explains, "However, there is little data available for the smaller-sized propellers use on drones." He states, "[The Petitioner] studied and developed a program using engineering software to describe and characterize the propulsion system of UAVs. This development can lead to better drone designs and offers knowledge into the emerging drone aerodynamics field."

Another letter from [redacted], assistant professor with the Department of Computer Science at [redacted] states, "Studying a drone from its physical flight characteristics, how it can be programmed to perform functions, and how it will interact with the internet will offer information that can be used by the critical infrastructure industry for various purposes." He also provides examples where drones benefit the energy industries and border security. Considering UAVs are an emerging technology for "critical" industries, [redacted] explains that the Petitioner's research with UAVs' capabilities would contribute information needed in the aviation technology field.

Such documentation shows the Petitioner's proposed endeavor has the potential to have broader implications in the Petitioner's field of aviation technology rising to the level of national importance.

B. Well Positioned to Advance the Proposed Endeavor

The second 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. Matter of Dhanasar, 26 I&N Dec. at 890. The Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner was well positioned to advance the proposed endeavor. Upon de novo review, we agree with the Director that the Petitioner does not meet the second prong of Dhanasar.[2]

[2] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

On appeal, the Petitioner asserts he is well-positioned to advance the proposed endeavor emphasizing his engineer-in-training certification, his contributions to the fields of aeronautics and engineering through his research and practical experience, and his "ongoing commitment to advancing the field of drones and industrial applications." The appeal does not state any specific issues with the Director's decision, instead generally asserting he is well-positioned to advance his proposed endeavor and requesting our reconsideration of the evidence in the record.

The record includes documentation of the Petitioner's resume; academic credentials; graduate school research papers; certification as an engineer-in-training and as a six sigma green belt with [redacted] recommendation letters discussing his past research and work experience; student membership cards for the [redacted] and photographs of the Petitioner making a student presentation.

Additional documentation was submitted with the Petitioner's reply to a request for evidence notice, however, the documentation is dated after this petition's filing date in July 2022. For instance, it includes a letter dated September 26, 2022 from [redacted] informing the Petitioner of his selection as a doctoral student for spring 2023 for a degree in electrical engineering Ph.D.; email correspondence between the Petitioner and various universities relating to his interest in applying for graduate programs; an email dated in January 2023 from [redacted] notifying the Petitioner that his research has a citation link; and email correspondence relating to the Petitioner's submission of his articles to publishers for their consideration. This additional evidence presents new facts that did not exist at the time of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, we will not consider the evidence to establish the Petitioner's eligibility for the benefit.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence. After considering the totality of the circumstances[3], we find the Petitioner did not demonstrate by a preponderance of the evidence that he is well positioned to advance the proposed endeavor under the second prong of Dhanasar.

We acknowledge that the Petitioner received certification as an engineer-in-training and two master of science degrees in engineering and in computer information systems. While the Petitioner's education renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments and certification as an engineer-in-training by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In Dhanasar, the petitioner held multiple graduate degrees, including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." Id. at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor, and education

[3] See generally 6 USCIS Policy Manual F.5(D)(1), https: //www.uscis.gov/policy-manual.

and certification in the field are factors among many that may contribute to such a finding.[4] We must consider the record as a whole. Moreover, we note the Petitioner has not claimed his advanced degree in a science, technology, engineering, or mathematics field and his proposed endeavor focus on critical and emerging technologies or other areas important to U.S. competitiveness or national security.[5]

The record shows that he conducted research for his graduate studies, as evidenced with two research papers and recommendation letters from his professors. As indicated by the Petitioner, the basis for his proposed endeavor is his first research paper dated in 2016 entitled, [redacted] Although the Petitioner submitted his 2016 research paper to multiple scientific journals for publication, the record does not show it was published, has a citation history, or has generated positive discourse in his field.

In 2021, the Petitioner co-authored the second research paper entitled, [redacted] which relates to the Chandy-Misra algorithm being a possible solution to synchronization problems in computing and operating systems. Although he indicates this more recent research would assist with the software development needed for his proposed endeavor, the record does not show how this research relates to his proposed endeavor of researching the aerodynamics of UAVs and their application to civilian task and industries. Also, the record does not include evidence demonstrating to what extent either research paper constitutes a record of success or progress in the field of aviation technology.

The Petitioner submitted recommendation letters discussing his research projects and his knowledge of engineering and computer information systems. The letters mostly discuss the Petitioner's earlier research work from 2016, generally summarizing his research project and maintaining the project contributes to UAV research and the aviation technology field. For instance, a letter from the Petitioner's graduate school colleague, [redacted] describes the Petition's graduate research with UAVs and his software development knowledge being used for different types of simulations involving UAVs. He summarizes the project's study of quadcopter propellers and his drone wind tunnel experiments to emphasize the research contributes to providing information for the methods of studying drones to improve their design and fuel efficiencies. The letter also generally emphasizes the Petitioner's "aeronautical expertise" through his coursework, his ability as a software programmer, and his leadership abilities. Also, the letter from [redacted] explains that he evaluated the Petitioner's research with UAVs in 2016 and explains, "The nature of [the Petitioner's] work simply contributes knowledge to an important field that will serve the interest of the United States in many ways." He describes industries that could "use information such as the propeller characteristics and quadcopter body drag information to design and manufacture drones suited for a particular purpose." Additional letters from the Petitioner's university professors and work colleagues similarly attest to the Petitioner's work ethic, knowledge in engineering and computer science, his professional research skills, and his enthusiasm to research UAVs.

We acknowledge that the letters show the authors value the Petitioner's research work and express interest in having the Petitioner continue researching UAVs. However, the letters do not detail his achievements and contributions to his field, or how the Petitioner's research findings have had an

[4] See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).
[5] See generally 6 USCIS Policy Manual, supra, at F.5(D)(2).

impact in the field, have assisted others in the field, or otherwise reflect a record of success or progress showing he is well-positioned to advance the proposed endeavor.[6] It is the nature of scientific research to produce new knowledge. The national interest waiver is an additional benefit not provided to every member of the professions holding an advanced degree who applies, and not every productive researcher will qualify for that additional benefit.

Another letter from [redacted], a professor in the [redacted] explains that he does not personally know the Petitioner but has knowledge of his work with drones through his university colleagues. He explains that the Petitioner's work with UAVs is of particular interest since the more efficient use of UAVs could increase efficiencies with agricultural tasks. A similar letter from [redacted] explains becoming aware of the Petitioner's research work with drones through a colleague. His letter also describes the Petitioner's engineering and information technology background and knowledge being used for the Petitioner's research with drones. [redacted] explains that after studying the Petitioner's work, he believes the Petitioner's skillset would benefit the oil and gas industry by improving the programming and use of drones in the industry.

Although the authors are impressed with the Petitioner's knowledge of aviation technology and his research work with UAVs, they do not indicate that his work has influenced his field or has been adopted by others to establish he is well-positioned to advance his proposed endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Id., see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value). Here, the recommendation letters summarize the Petitioner's academic and professional accomplishments and his prior research with UAVs; however, they do not sufficiently detail that the Petitioner's work has been an impetus to further research or defining for the field of aviation technology.

While we recognize that 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. We examine 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 support such a finding. Matter of Dhanasar, 26 I&N Dec. at 890. The Petitioner, however, has not demonstrated that his research has assisted to progress in the field of aviation technology, or that the research has generated substantial positive discourse in assessing the aerodynamics of UAVs and their application to civilian task and industries. Nor does the evidence show that his research findings have been frequently cited by independent researchers or otherwise constitute a record of success or progress in advancing research relating to his proposed endeavor. 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.

[6] See generally 6 USCIS Policy Manual, supra, at F.5(D)(1).

Because the documentation in the record does not sufficiently establish that 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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the third prong of the Dhanasar framework. 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

As the record does not establish that the Petitioner has met the requisite second prong of the Dhanasar analytical framework, we find that the Petitioner is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed.

ORDER: The appeal is dismissed.