U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29834434

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an epidemiologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility as an advanced degree professional and for 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. 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 sustain the appeal.

To establish eligibility for a national interest waiver, petitioners must 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. In addition, petitioners must show the merit of 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 that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if:

- 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.

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

Although the Director indicated the Petitioner did not submit a certificate or degree establishing his advanced degree, the record contains a copy of the Petitioner's degree and academic transcript reflecting his receipt of a doctoral degree in biomedicine. Accordingly, the Petitioner established his qualification as an advanced degree professional consistent with 8 C.F.R. § 204.5(k)(3)(i)(A).

Regarding the national interest waiver, the Petitioner intends to conduct research in developing safe and sustainable strategies that accelerate the progress towards control and elimination of neglected infectious diseases. The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director found the Petitioner established eligibility for both aspects of this prong, and we agree with the Director's determination. Although the Director decided the Petitioner did not satisfy the second and third prongs, the record does not support this conclusion.

The second prong shifts the focus from the proposed endeavor to the Petitioner. *Dhanasar*, 26 I&N Dec. at 890. The record includes his curriculum vitae, academic records, published works, peer review activity, and documentation of numerous articles that cited to his research findings.[2] In addition, the Petitioner offered reference letters describing his expertise and his past record of success in that field. Several expert references identify specific examples of how the Petitioner's research progress 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, and that the rate at which his work has been cited is high relative to others in the field. His experience and expertise, published articles, citation evidence, record of success contributing to various research projects, and progress in his field position him well to advance his proposed endeavor. Accordingly, the Petitioner has demonstrated that he satisfies the second prong of the *Dhanasar* framework.

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. *Dhanasar*, 26 I&N Dec. at 890.[3] As an epidemiologist and researcher with a doctoral and master's degree, the Petitioner possesses considerable experience and expertise. The record also demonstrates the widespread benefits associated with his research in infectious diseases. In addition, the Petitioner has documented his past successes in advancing research and publishing influential research findings. Based on the Petitioner's track record of successful research and the significance of his proposed work to advance U.S. 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.

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[2] "USCIS considers an advanced degree, particularly a Doctor of Philosophy (Ph.D.), in a 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/policy-manual.

[3] 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).

For the reasons discussed above, the Petitioner qualifies as an advanced degree professional and has met the requisite three prongs set forth in the *Dhanasar* analytical framework. Accordingly, the Petitioner merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.