U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29830165

Date: FEB. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, teacher, and policy adviser seeks classification as a member of the professions holding an advanced degree or of exceptional ability, Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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).

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 the record did not demonstrate their eligibility 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. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director concluded that the Petitioner qualified 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 of a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a site reliability engineer with [redacted] Czechia (Czech Republic). The Petitioner proposed to endeavor to research the effect, influence, and use of technology (specifically artificial intelligence and social media) on internal and external security concerns like national security threats, immigration and border security, diplomacy, conflict resolution, and radicalization for cities, states, and nations. The Petitioner also proposed to teach "the next generation of scholars who will contribute to the development of" security conflict, violence and youth studies."

For the reasons discussed below, we conclude the Petitioner's endeavor is substantially meritorious and nationally important. But the evidence in the record does not adequately demonstrate that the

Petitioner is well positioned to advance their proposed endeavor. So 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. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner provided sufficient evidence to establish the substantially meritorious nature of their proposed endeavor. But the Director concluded the Petitioner's endeavor was not nationally important because they did not demonstrate the "national or global implications in continuing [their] work." We do not view the implications of a proposed endeavor solely through a geographical lens. Broader implications can reach beyond a particular proposed endeavor's geographical locus and focus. The relevant inquiry is whether the broader implications apply beyond just narrowly conferring the proposed endeavor's benefit.

Moreover, the Director states that they "cannot conclude a finding that the endeavor has national importance" because "the evidence does not support a finding that [the Petitioner's] methods, solutions, or skills differ from or improve upon those already available in the United States." But the first prong of the *Dhanasar* analytical framework focuses on the proposed endeavor. So, attributes such as the "methods, solutions, or skills" of the individual petitioner are not relevant to an examination of whether a proposed endeavor rises to a level of national importance.[1]

We recognize the Director's concerns related to the Petitioner's proposed endeavor. The Petitioner presented 14 separate pathways describing their research. They characterized their social science research as research in information technology and artificial intelligence. The record also reflects that the Petitioner only began to work in non-academic positions in information technology focused pursuits after graduation. These seemingly disparate areas of concentration rendered evaluation of the Petitioner's proposed endeavor challenging. But the Petitioner's detailed statement of their endeavor described their research and its potential prospective impact on the domestic and international security of nation states. Further examination of the evidence the Petitioner submitted uncovered that the Petitioner proposed to research the effect of information technology, artificial intelligence, social media, and other technology adjacent features of life in the 21st century on social science topics in national and international security. And the Petitioner submitted a probative letter of support from an expert in the field of social science research currently serving as faculty at the [redacted] England, United Kingdom, which meaningfully described how the security of a nation externally is linked to the security of the individuals within the nation internally and described the Petitioner's past experience in a personalized and meaningful manner. Additionally, the Petitioner submitted documentation demonstrating broader implications on the field from their proposed research, as the results of it were and are intended to continue to be disseminated to others

[1] These matters are relevant to a demonstration of eligibility under the second prong of the *Dhanasar* framework.

in the field through academic journals in the field. The Petitioner's assertions are supported by material, relevant, and probative evidence demonstrating both the substantial merit and national importance of their proposed research. So, whilst we agree with the Director's conclusion that the Petitioner demonstrated its substantial merit, we disagree with the Director's conclusion regarding the national importance of the Petitioner's proposed endeavor and withdraw it. We conclude the Petitioner has demonstrated the national importance of their proposed endeavor under the first prong of the *Dhanasar* framework.[2]

B. Well Positioned To Advance The Proposed Endeavor

In determining whether a petitioner meets *Dhanasar's* second prong, "we consider factors including, but not limited to: the individual's 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.* at 890.

The record includes the Petitioner's curriculum vitae, academic records (including their Ph.D. in political science), published and presented work, and peer review. In addition, the Petitioner provided their Google Scholar profile, documentation of articles that citied to their research findings, personal letters of support, evidence of professional certifications in information technology topics, and participation in invited seminars.[3]

The Petitioner asserts that they are "rigorously equipped with a comprehensive portfolio of qualifications" that position them well to advance their proposed endeavor. The Petitioner specifically highlights their educational credentials and citation history from their body of research to support how well they are positioned to advance their proposed endeavor. The Petitioner also mentions their participation in several scholarship funded study abroad programs administered by [redacted]. We note that the Petitioner has earned a Ph.D. in political science with a concentration in African studies and a master's degree in peace and conflict studies. Whilst the Petitioner's Ph.D. and master's level educational credentials in disciplines which are not science, technology, engineering, or mathematics (STEM) related[4] render them eligible for the underlying EB-2 permanent immigrant classification and are a positive factor for consideration, the Petitioner has not adequately demonstrated that their academic accomplishments and citation record by themselves are sufficient to demonstrate that they are well position to advance their proposed endeavor. And the record does not adequately describe with meaningful details the study abroad opportunities the Petitioner identified for us to determine how they contribute to an evaluation of the Petitioner's positioning to advance their proposed endeavor. We look to a variety of factors in

[2] The Petitioner also identified "teaching" as a component of their proposed endeavor. But in *Dhanasar* we discussed how teaching would not impact a field broadly in a manner which rises to national importance. The benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

[4] "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 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.

determining whether a petitioner is well positioned to advance their proposed endeavor, and education and citations are two factors among many that may contribute to such a finding.

The record demonstrates that the Petitioner has conducted research during their graduate studies and after their graduation from their educational programs. But the Petitioner has not demonstrated that this research work renders them well positioned to advance their proposed endeavor. Whilst 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 their 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 support such a finding. *Id.* at 890. The Petitioner here, however, has not sufficient demonstrated that their published and presented work has served as an impetus for progress in social science research on the domestic and international security of nation states.

The Petitioner also cited their development of a "curriculum that incorporates elements of security studies, AI [artificial intelligence], IT [information technology], and data analytics." In support, the Petitioner submitted three undated course syllabi from the [redacted] for courses in [redacted]" It is not apparent from this "teaching portfolio" how the course syllabi constitute a curriculum. Moreover, whilst it can be inferred from the course syllabi that the Petitioner taught these courses, it is not sufficiently clear that the Petitioner developed the identified courses. And, even if the courses the Petitioner identified did constitute a curriculum, we would not conclude that it is adequate to support the Petitioner's assertion that they are well positioned to advance their proposed endeavor. For example, it is not apparent when the courses were taught and whether they continue to be taught. Furthermore, the course syllabi do not sufficiently indicate that the curriculum, such that it is, incorporates AI, IT, or data analytics as the Petitioner contends. So it is not sufficiently apparent that the course syllabi the Petitioner submitted reflect a similar effort to the endeavor the Petitioner proposes to undertake in the United States.[5]

Regarding the Petitioner's invitations to serve and service as a peer reviewer, they submitted several emails requesting their service from editorial boards for several journals. But it is not clear from the record whether the Petitioner completed the reviews. Moreover, the record does not indicate whether the Petitioner's level of participation in a peer review process represented a record of success in their field or is otherwise an indication that they are well-positioned to advance their proposed endeavor.

The Petitioner also submitted several letters into the record from mentors, colleagues, peers, and students in a variety of different disciplines ranging from social sciences to engineering to information technology. The letters praised the Petitioner's numerous positive qualities for their teaching,

[5] As we mentioned earlier, the Petitioner did identify "teaching" as a component of their proposed endeavor. But in *Dhanasar* we discussed how teaching would not impact a field broadly in a manner which rises to national importance. The benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. Future teaching activities, as a component of a proposed endeavor, would not advance a petitioner's eligibility under the first prong of the *Dhanasar* analytical framework. So, the Petitioner's past activities teaching courses in this case are not sufficient to serve as a model of their future activities to demonstrate their beneficial positioning to advance a nationally important proposed endeavor.

research, and scholarly pursuits. One letter also identified the Petitioner's "ability to adapt and…learn easily." But the effusive praise did not provide pertinent or relevant details of the Petitioner's specific work influencing their field of security research such that we could evaluate whether it represents a record of success or progress rendering the Petitioner well positioned to advance their proposed endeavor.

And whilst the letter of [redacted] did describe one specific aspect of the Petitioner's research work, it still did not adequately demonstrate the Petitioner's positioning to advance their proposed endeavor. It is not sufficiently established how [redacted] a postdoctoral research fellow in mechanical engineering at [redacted] is qualified to discuss the Petitioner's research in social sciences, specifically the effect, influence and use of technology (artificial intelligence and social media) on internal and external security concerns like national security threats, immigration and border security, diplomacy, conflict resolution, and radicalization for cities, states and nations. So, we do not conclude this letter reflects the Petitioner's record of success or progress in pursuits like their proposed endeavor.

III. CONCLUSION

For the aforementioned reasons, the Petitioner has not satisfied the second prong of the *Dhanasar* analytical framework. Because the evidence in the record does not establish that they are well positioned to advance their proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated their eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding their eligibility under the third prong outlined in *Dhanasar*. *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).

ORDER: The appeal is dismissed.