U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36845174

Date: FEB. 13, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a graduate research assistant, 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 she 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.

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;

[1] *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).

- 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 found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The sole 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.

At the time of filing, the Petitioner was working as a graduate research assistant in the Department of [redacted].[3] She indicated that she is pursuing her Ph.D. at [redacted] and that her research involves "investigations into minimizing construction industry hazards in different phases of construction, safety analysis, and inspection. The focus of my safety management research, in particular, was on wearable safety promotion devices and in-pipe robot inspections." The Petitioner further asserted that her "research has applications for enhancing safety analyses through addressing communication and decision-making obstacles in sustainable design, conflict detection, and workspace planning contexts."

Regarding her proposed endeavor, the Petitioner indicated that she plans "to develop dynamic 4D modeling strategies and utilize artificial intelligence techniques in order to optimize construction workspace planning and enhance the productivity, safety, and efficiency of labor crews." She also stated:

> Upon the completion of my degree, I intend to pursue a position as a postdoctoral researcher at [redacted] My planned research topics include an investigation on minimizing possible hazards in different phases of construction by focusing on workspace planning. I plan to focus on developing a novel approach that utilizes artificial intelligence algorithm techniques to optimize construction workspace planning and minimize potential hazards in complex job sites characterized by congestion.

In response to the Director's request for evidence (RFE), the Petitioner further indicated:

> My research focuses on developing innovative methods to quantify and mitigate time-space conflicts in construction projects. I am committed to improving our understanding of dynamic conflict detection and quantification, exploring various conflict avoidance strategies, and investigating the sensitivity levels of different activities and their impacts on project durations. Specific goals include refining the

[2] The Petitioner received a Master of Science degree in Civil Engineering (2015) from [redacted] in Iran.

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her research position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* framework.

equations for quantifying time-space conflicts, exploring alternative conflict management strategies, and integrating artificial intelligence (AI) and machine learning to enhance conflict quantification and resource allocation.

For the reasons discussed below, we conclude 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 of the Proposed Endeavor

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* We agree with the Director's determination that the Petitioner's endeavor has substantial merit.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We withdraw the Director's determination that the Petitioner did not establish the national importance of her proposed endeavor under *Dhanasar's* first prong. As evidence that her proposed research has substantial merit and national importance, the Petitioner presented information about artificial intelligence in construction, digital construction technologies, the deteriorating state of U.S. infrastructure, critical and emerging technologies, and the construction industry. She also provided letters of support discussing how her undertaking contributes to advancements in the development of modeling techniques for improving construction workflow planning. Additionally, the Petitioner submitted documentation indicating that the benefit of her proposed research offers broader implications for the field of construction engineering, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has demonstrated both the substantial merit and national importance of her proposed research, she has established that she meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. 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. *Id.* We withdraw the Director's determination that the Petitioner established she meets *Dhanasar's* second prong.

The record includes documentation of the Petitioner's curriculum vitae, Master of Science degree, published and presented work, and peer review service. The Petitioner also offered evidence of articles that cited to her published work, citation metrics, and letters of support discussing her graduate research at [redacted]

In letters supporting the petition, the Petitioner's references discussed her graduate research projects involving construction workspace planning, building information modeling, and in-pipe robots. For

example, Dr. B-Y-R-, formerly an associate professor in the Department of [redacted] at [redacted] and presently a professor at [redacted] indicated that the Petitioner has "introduced a novel equation to quantify the impacts of time-space conflicts to optimize construction workspace planning and reduce hazards in job sites affected by congestion, as well as to reduce conflicts that arrive from the complex nature of construction projects, which often involve multiple subcontractors." He further asserted that the Petitioner's work "provided vital insights into existing conflict avoidance approaches and investigated the potential of allowing controlled disputes within projects." Dr. B-Y-R- also stated that the Petitioner "developed a new building information modeling framework for calculating how building envelope materials and design impact the energy efficiency of buildings." While the Petitioner's equation to quantify the impacts of time-space conflicts and her building information modeling framework have contributed knowledge to an active field of research, she has not demonstrated the extent to which her findings are being utilized in the construction industry. Nor has she otherwise demonstrated that her findings constitute a record of success or progress rendering her well positioned to advance her proposed endeavor.

Regarding the Petitioner's work involving in-pipe monitoring robots, Dr. Z-S-, a professor at [redacted] stated that the Petitioner "conducted a comprehensive review of in-pipe robotic devices used for monitoring and inspecting pipelines." Dr. Z-S- further noted that "[t]his review led her to propose a systematic process for researchers working on in-pipe robots, providing a deep understanding of methods, sensors, and implementation techniques for different tasks." Likewise, Dr. K-A-, a professor at [redacted] indicated that the Petitioner "created a systematic classification system for these devices, taking into account their shape movement profiles, the techniques used to fulfill their performance parameters, and their array of sensor systems," but the Petitioner has not shown that her work shows success or progress at a level that renders her well positioned to advance her proposed endeavor.

In addition, Dr. P-T-, an associate professor at [redacted] indicated that the Petitioner's research identified "key factors that impact the use of tactile-based wearable devices for construction workers who are on foot." Dr. P-T- further stated that the Petitioner "developed a new communication network for determining how to create alerts for each mode of communication" and "also developed a proof-of-concept tactile-mode wearable device for tracking worker location with respect to onsite hazards, such as uncovered holes." While Dr. P-T- asserted that the Petitioner's work is "valuable for understanding the human factors that need to be considered when developing and implanting wearable device programs," she has not shown that her level of research success is sufficient to demonstrate she is well positioned.

The Petitioner contends that her coauthored research articles "have been published in the top journals" in her field such as *IEEE Access* and *Sensors*.[4] That a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in their field.

As it relates to the citation of the Petitioner's work, the Petitioner provided her Google Scholar profile from November 2023. The November 2023 information from Google Scholar indicates that her three

[4] The record includes Google Scholar rankings for these journals.

highest cited articles, entitled [redacted] (2021), [redacted] (2022), and [redacted] (2022) each received 11, 9, and 1 citation(s), respectively.[5] The Petitioner does not specify how many citations for each of these individual articles were self-citations by her or her coauthors. In response to the Director's RFE, the Petitioner provided a July 2024 Google Scholar profile listing additional citations her published articles received that post-date the December 4, 2023 filing of the Form I-140 petition.[6] These later citations provided in response to the RFE do not establish her eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

The Petitioner also provided January 2023 data from Clarivate Analytics (InCites Essential Science Indicators) regarding baseline citation rates and percentiles by year of publication for the "Engineering" research field. The Petitioner contends that her 2022 paper, entitled [redacted] ranked among "the top 10% of the most cited articles published in Engineering in 2022." The Petitioner did not indicate whether she factored in any self-citations in determining this percentile ranking. In addition, because the Petitioner has not shown that the January 2023 Clarivate Analytics data is contemporaneous with the Petitioner's November 2023 Google Scholar information, she has demonstrated that the former provides a proper analysis of her citation record.[7] Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Regardless, the Petitioner has not established that her co-authorship of this paper which had received nine citations at the time of filing the petition automatically demonstrates her record of research success or otherwise renders her well positioned.

Furthermore, the Petitioner relies on citation information concerning the larger field of engineering and compares her citation frequency in construction engineering to that of the larger field. While we acknowledge that construction engineering is part of the larger field of engineering, the Petitioner has not submitted sufficient evidence confirming that information extrapolated from the larger field applies equally to each subfield within engineering, including construction engineering. Thus, the Petitioner's comparison of her citation number in her field with information regarding citation in the larger field of engineering does not sufficiently establish the level of her success or impact in the field of construction engineering.

Additionally, the Petitioner's RFE response included OpenAlex author metrics which she claims compares her citation impact to that of other construction engineering researchers. This information lists the "Years Covered" as "2021-2024" and therefore it does not establish the Petitioner's eligibility at the time of filing.[8] *See* 8 C.F.R. § 103.2(b)(1), (12). Regardless, citation frequency which is

[5] None of the Petitioner's remaining three coauthored articles had received citations as of November 2023.

[6] For example, the citation counts for her three highest cited articles as of July 2024 had increased to 22, 11, and 2 citations. None of the Petitioner's remaining three articles were cited to more than once as of July 2024.

[7] A January 2, 2023 webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

[8] For instance, the OpenAlex author metrics include citation data from 2024 that post-date the filing of the petition.

quantitative in nature does not reveal the reasons for the citations, which involve a qualitative analysis. In other words, a high citation number might show that others in the field have noticed the Petitioner's work, but it does not confirm that her work has impacted or advanced the field of in such a way that renders her well positioned. Moreover, the Petitioner has not demonstrated that the number of citations received by her published articles at the time of filing reflects a level of interest in her work from relevant parties sufficient to meet *Dhanasar's* second prong.

As it relates to the Petitioner's education, while her Master of Science degree renders her eligible for the underlying EB-2 visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well positioned to advance her proposed endeavor.[9] In *Dhanasar*, the record established that 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 her proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding the Petitioner's plan for future activities, she stated in response to the RFE that she intended to "expand the application of AI-4D BIM applications to address more complex construction challenges." She further indicated: "Upon completion of my degree, I intend to pursue a position as a postdoctoral researcher at [redacted] where I will continue to conduct research in pursuit of my proposed endeavor." With respect to the Petitioner obtaining a future postdoctoral position at [redacted] or at another U.S. university or research institution, she did not provide documentation from any such organization showing their communications or identifying the specific research projects she intends to pursue on the organization's behalf. Without sufficient evidence demonstrating the means or financial support to undertake her proposed research in the United States after graduation from her current Ph.D. program, the Petitioner has not demonstrated that her plan for future activities renders her well positioned to advance the proposed endeavor.[10]

Regarding her peer review activity, the Petitioner provided letters of support indicating that she reviewed papers for *Engineering Construction and Architectural Management*, *IEEE Access*, *Journal of Green Building*, and *Journal of Electronics*. The Petitioner, however, has not demonstrated that her occasional participation in the widespread peer review process represents a record of success in her field or that it is otherwise an indication that she is well positioned to advance her research endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies, but she has not shown that this work renders her well positioned to advance her

[9] "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. competitive or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." *See generally* 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual. A degree in and of itself, however, is not the only factor we consider in determining if a person is well positioned to advance their proposed endeavor. *Id.*

[10] For example, the Petitioner did not offer evidence showing that she has received funding for her research proposals or future projects. In *Dhanasar*, the record established that the petitioner "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. Regarding her work at [redacted] the record does not show that the Petitioner (rather than her professor) was mainly responsible for obtaining funding for their research projects.

proposed research. 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 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 supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her graduate work constitutes a record of success or progress in construction engineering research rendering her well positioned to advance her proposed endeavor. As the Petitioner has not demonstrated that she is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Whether on Balance a Waiver is Beneficial to the United States

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. *Id.* at 890-91. 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. *Id.* In each case, the factor(s) 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. *Id.* at 891.

In denying the petition, the Director's decision stated:

> The Petitioner failed to submit evidence that her knowledge or skills are not easily articulated in labor certification, and she has not demonstrated, as claimed, that she presents benefits to the United States through her proposed endeavor that outweigh those inherent in the labor certification process. In addition, the Petitioner has not shown that she offers contributions of such value that, overall, they would benefit the nation even if other qualified U.S. workers were available.

On appeal, the Petitioner argues that her graduate research position "is inherently temporary and will terminate upon her completion" of the Ph.D. program at [redacted] and therefore "it was impractical for [her] to obtain a labor certification." She further indicates that "it is evident that the limited duration of [her] research position at the time of filing could not have constituted permanent employment and thus, could not have satisfied labor certification requirements." We acknowledge the impracticality of obtaining a labor certification for a graduate student.

In addition, the Petitioner asserts that "her proposed endeavor involves research implicating several critical and emerging technology fields, including Advanced Computing, AI, and Human-Machine Interfaces that are of the utmost national urgency," but she has not demonstrated that her specific research contributions have affected these fields at a level sufficient to warrant foregoing the labor certification process. She also claims that "the evidence of record establishes that the benefits

stemming from her research are so significant that it would still be beneficial to waive the labor certification even if other qualified domestic workers were available." The Petitioner points to her master's degree, research experience, peer review service, and personal statement. For *Dhanasar's* third prong, we assess whether the proposed endeavor and the individual being well positioned to advance that endeavor, taken together, provide benefits to the nation such that a waiver of the labor certification requirement outweighs the benefits that ordinarily flow from that requirement. Here, the Petitioner has not demonstrated that her construction engineering and workspace planning contributions supersede the benefit from the labor certification.

While the record includes information about artificial intelligence in construction, digital construction technologies, the deteriorating state of U.S. infrastructure, critical and emerging technologies, and the construction industry, this information is insufficient to show that the national interest is better served by a waiver of the job offer and thus the labor certification requirement. The labor certification process is intended to ensure that the admission of foreign workers will not adversely affect the job opportunities, wages, and working conditions of U.S. workers. We acknowledge the inapplicability of labor certification; the Petitioner's master's degree in a STEM field (civil engineering); her graduate research experience; and her findings relating to construction workspace planning, building information modeling, and in-pipe robots. The evidence in the aggregate, however, is not sufficient to show that a national interest waiver outweighs the benefits inherent to the labor certification process.

The Petitioner has not shown that she offers contributions of such value that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements even assuming that other qualified U.S. workers are available.

III. CONCLUSION

As the Petitioner has not met the requisite second and third prongs of the *Dhanasar* analytical framework, we conclude that she has not established she 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.