U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36872849

Date: FEB. 18, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a semiconductor company, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish 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.

To qualify for the underlying EB-2 visa classification, petitioners must establish qualification as 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 petitioners establish eligibility for the underlying EB-2 classification, they must then demonstrate that the beneficiaries 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 petitioners demonstrate:

- 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 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).

Id.

Regarding the national interest waiver, the Petitioner indicated the proposed endeavor involved "continu[ing] to drive competitive analysis for power performance optimization of latest graphics and compute products using pre-silicon strategies," "enhancing diagnostics to enable competitive analysis and develop[ing] tools to drive analysis and optimization effort," and "collaborat[ing] with architects and design teams to instrument low power design in upcoming, advanced proprietary semiconductor products and solutions." The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director determined that although the Petitioner satisfied the first prong, the Petitioner did not fulfill the remaining two prongs.

The second prong shifts the focus from the proposed endeavor to the beneficiary in order to determine whether the individual is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record contains the Beneficiary's curriculum vitae, educational credentials, reference letters, conference papers, company awards, employment letters, and evidence of approval for L-1 nonimmigrant classification. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar's* second prong.

The Beneficiary possesses a bachelor of technology in electrical engineering from the [redacted] and a master of engineering from [redacted] USCIS considers an advanced degree, particularly a Ph.D. in a Science, Technology, Engineering, and Mathematics (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/policymanual. However, a degree in and of itself is not a basis to determine that a person is well positioned to advance the proposed endeavor. *Id.* Although the Beneficiary's degree in engineering falls within a STEM field, the totality of the evidence in the record, as discussed below, does not show that he is well positioned to advance his proposed endeavor. Furthermore, 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 an individual is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The Petitioner submitted three recommendation letters from former employees discussing the Beneficiary's accomplishments and contributions. However, the letters contain identical language; specifically, the last three paragraphs of all three letters mirror each other. As such, the identical language suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content and undermines their probative value. *See Hamal v. Dep't of Homeland Sec.*, No. 19-cv-2534, 2021 WL 2338316, at *4 n.3 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023).

In addition, the record includes evidence of the Beneficiary's authorship of five conference proceeding papers.[2] However, the Petitioner has not established how the Beneficiary's publication history indicates that he is well-positioned to advance his endeavor. Moreover, the Petitioner did not show how the Beneficiary's publications reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong. Further, while we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

The Petitioner also argues the Beneficiary's over three years of past experience with an oil and natural gas corporation. According to a letter from K-H-P-, the Beneficiary performed various duties, such as designing and implementing systems for power and performance efficiency; setting up automatic cut off system, dynamic braking system, and fault display system; and leading teams for preventive maintenance operations. However, the Petitioner did not show how the Beneficiary's past experience relates to the proposed endeavor, let alone a track record of success in order to advance the proposed endeavor. Moreover, while the Petitioner stresses the Beneficiary's "more than five (5) years of experience with Petitioner's group of companies inclusive of Beneficiary's experience," including the Beneficiary's receipt of internal company awards, the Beneficiary's experience with the Petitioner is only one factor among many considered in order to demonstrate that the Beneficiary is well positioned to advance his proposed endeavor. 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. Here, in considering all of the aspects, the Petitioner has not sufficiently established the Beneficiary's record of success in advancing his proposed endeavor.

As the record is insufficient to demonstrate the Beneficiary is well positioned to advance his proposed endeavor, the Petitioner has not established the Beneficiary satisfies the second prong of the *Dhanasar* framework. As such, analysis of the Beneficiary's eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[3] Accordingly, the Petitioner has not shown the Beneficiary's eligibility for 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.

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[2] The Petitioner claims the Beneficiary has co-authored "Six (6) technical papers"; however, the record indicates the Beneficiary's authorship of five papers. *See* Exhibit 7 from the Petitioner's initial filing and Exhibit 7 from the Petitioner's response to the Director's request for evidence. *See also* letter from R-O-, the Beneficiary's manager, who listed five of the Beneficiary's co-authored papers.

[3] *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).