U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37077659

Date: FEB. 19, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a materials engineer, 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 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;
- The individual is well-positioned to advance their proposed endeavor; and

[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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Petitioner stated his proposed endeavor is "to develop innovative mitigation strategies and technologies to minimize or control scale formation and optimize the steel production process in order to create sustainable and high-quality steel." The Petitioner further stated he planned to continue pursuing his proposed endeavor in his current position as a product development metallurgist at [redacted] but claimed his proposed endeavor is distinct from his employment.

The Director determined the Petitioner qualified for EB-2 classification as an advanced degree professional by virtue of his Master of Science degree in materials science and engineering. The Director concluded the Petitioner established the substantial merit and national importance of his proposed endeavor, but did not demonstrate that he was well positioned to advance his proposed endeavor. On appeal, the Petitioner asserts the Director erred and he is eligible for and merits a waiver of the job offer requirement in the national interest.

A. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. *Id.* at 890. To determine whether individuals 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.*

On appeal, the Petitioner asserts the Director erroneously applied an "influence" standard when determining the Petitioner did not establish he is well positioned to advance his proposed endeavor. To the extent the Director's use of the words "influence" and "influential" when assessing whether the Petitioner had a record of success may be construed as inconsistent with *Dhanasar*, we withdraw those portions of the Director's decision.

The Petitioner also claims the Director dismissed the relevant evidence as insufficient individually and did not assess the evidence in its totality. We have reviewed the entire record and assessed the relevant evidence in the aggregate. As to the Petitioner's education, skills, and knowledge, the record shows he possesses a Master of Science degree in materials science and engineering and support letters praised his relevant skills and knowledge. The Petitioner also provided a plan for future activities in his statements of his proposed endeavor.

The record does not, however, establish that the Petitioner has a record of success in efforts related or similar to his proposed endeavor. The Petitioner submitted evidence of his co-authored publications on $BaTiO_3$ Ceramics, Compositionally Complex Bismuth Ferrite, Multiferroic Ceramic Composite, Bioactive Glass, Selective Laser Melted Near a Ti-6AL-2Sn-4Zr-2Mo Alloy, Porcelain Stoneware Tiles, Role of Nanoparticles in the Biological System Dealing with Complex Diseases and Medication,

Sustainable Nanomaterials for Biomedical Engineering, and Applications of Nanomaterials in Dentistry. The Petitioner also submitted evidence that his articles had been cited a total of 35 times at the time his petition was filed and submitted articles that cited his work and addressed topics including titanium alloy, $BaTiO_3$ ceramics, nanocrystalline $BiFeO_3$ particles, thermally evaporated $AgMoO_3$ thin film, improvement of ferroelectric properties, high-entropy oxide ceramics, enhancement of multiferroic and optical properties in $BiFeO_3$, properties of BCT-NF multiferroic composite, and Cd-Zn spinel ferrite nanoparticles.

While the evidence shows the Petitioner has published his research which has been cited by other researchers, the record does not indicate the Petitioner's publications and citations have been in efforts related or similar to his proposed endeavor. The Petitioner proposes to "to develop innovative mitigation strategies and technologies to minimize or control scale formation and optimize the steel production process in order to create sustainable and high-quality steel." None of his publications or citations addressed scale formation in steel production or otherwise referenced steel production. The Petitioner has not explained how his publications and citations on different materials and topics are related or similar to his proposed endeavor. Consequently, the record does not demonstrate the Petitioner has a record of success in related or similar efforts.

The record also does not indicate that the Petitioner has made any progress towards achieving the proposed endeavor. The Petitioner's publications and citations do not address his proposed endeavor. In response to the Director's request for evidence (RFE), the Petitioner submitted an invitation he received to a steel research meeting, but he did not submit evidence of any corresponding publication or other documentation of steel-related research he presented at this meeting. The Petitioner's support letters also do not indicate that he has conducted research on this subject. M-J-H-[2] praises the Petitioner's work on $BaTiO_3$ ceramics and multiferroic materials, but does not discuss any research the Petitioner has conducted on steel production. J-K- praises the Petitioner's work on the role of nanoprecipitates in advanced metastable titanium alloys, but also does not discuss any research the Petitioner has conducted on his proposed endeavor.

While the record shows other researchers have cited the Petitioner's past work, the Petitioner has not established the interest of potential customers, users, investors, or other relevant entities or individuals in his proposed endeavor. As previously discussed, the Petitioner's past work and articles citing his past work do not address scale formation in steel production or otherwise reference his proposed endeavor. J-K- stated that he cited and used the Petitioner's discovery of the hexagonal close-packed crystal structure in a' martensite in his work on laser-powder bed fused near- a titanium alloys made from well-crafted heat treatments. J-K- did not indicate that he has cited or used the Petitioner's work on steel production in any of his own research.

Although the Petitioner has demonstrated he has the education, skills, and knowledge to advance his proposed endeavor and he submitted a plan for his future activities, the Petitioner has not established a record of success in efforts related or similar to his proposed endeavor, any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals in his proposed endeavor. Consequently, the Petitioner has not shown that he is well positioned to advance his proposed endeavor.

[2] We use initials to protect the privacy of the referenced individuals.

B. Whether on Balance a Waiver is Beneficial

The Petitioner has not established that he is well positioned to advance his proposed endeavor. As this issue is dispositive of his appeal, we decline to reach and hereby reserve determination of his eligibility under the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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

The Petitioner has not established that he is well positioned to advance his proposed endeavor and does not meet the second prong of the *Dhanasar* framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.