U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34905452

Date: JAN. 15, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical 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 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.

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 Director determined that the Petitioner established eligibility for the underlying EB-2 classification as an advanced degree professional. The remaining 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. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar's* three-prong analytical framework and will dismiss the appeal. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

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. 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director determined that, although the Petitioner established the substantial merit of her proposed endeavor, she did not show its national importance.

In her initial filing, the Petitioner stated she intends to work as a postdoctoral researcher. Her proposed endeavor is to "develop frameworks for the fast and smooth accommodation and management of distributed energy sources into electric grids through design of efficient market mechanisms, policies, and technologies."

In response to the Director's request for evidence (RFE), the Petitioner submitted an updated statement, which further explained her proposed endeavor involving two research projects: (1) understanding the impact of bitcoin mining operations on the reliability of the Texas electric grid, and (2) evaluating the socio-economic and environmental implications of excessive data center expansion in Virginia, and exploring potential solutions with renewable energy integration.

In support of her proposed endeavor, the Petitioner provided various articles discussing renewable energy, energy access, crypto assets, data centers, and artificial intelligence. Considering the totality of the evidence, the Petitioner has sufficiently shown the substantial merit and national importance of her proposed endeavor, consistent with *Dhanasar's* first prong. Therefore, we will withdraw the Director's determination on the issue of national importance and conclude that the Petitioner meets this prong.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate the Petitioner is well positioned to advance her proposed endeavor under *Dhanasar's* second prong.

As a preliminary matter, the Petitioner contends that the Director applied a heightened standard of proof and did not adequately consider all the evidence, including documentation relating to her authorship, notable citations, and explanations of their significance. The Petitioner argues, citing to *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), that the Director's failure to consider all relevant evidence submitted is indicative of an abuse of discretion.

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. *Id.* at 376. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* The court in *Buletini* did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does it suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *See, e.g.*, *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1183 (9th Cir. 2021).

Here, the Director's decision reflects consideration of the evidence the Petitioner claims was disregarded and includes a discussion of why the record did not establish the Petitioner is well positioned to advance her proposed endeavor. While the Petitioner generally asserts that the totality of the evidence is sufficient to satisfy *Dhanasar's* second prong, upon a de novo review of the record, we agree with the Director's evaluation of the evidence and conclude that it does not establish the Petitioner satisfies this prong.

On appeal, the Petitioner contends her petition included "ample evidence" that she is qualified to advance her proposed endeavor and highlights her academic credentials, including her published articles, citation history, and peer review work, among other things.

The Petitioner holds a master's degree in electrical engineering-power systems and is currently a doctoral candidate in the field of electrical and computer engineering. And while the Petitioner's advanced degree in a STEM field is a positive factor for consideration, the Petitioner has not adequately demonstrated that her academic accomplishments are sufficient in and of themselves to demonstrate she is well positioned to advance her proposed endeavor. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. We look to a variety of factors, and education, citations, and peer review work are only several among many factors that may contribute to such a determination.

The Petitioner argues that her coauthored research articles have been featured in highly ranked journals with high impact factors and claims "her authorship therein attests to her prominent role in advancing electrical engineering and, consequently, her ability to pursue her proposed endeavor." However, the fact 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 sufficiently demonstrate how an individual's research represents a record of success in their field.

The Petitioner's publication and citation record also do not demonstrate her work "has made her an influential figure in her field of electrical engineering" as claimed. The Petitioner initially provided evidence from Google Scholar reflecting she published four, coauthored articles. Two of her four articles received 17 citations total, with her highest cited article receiving 15 citations.[2] In response to the Director's RFE, the Petitioner provided updated Google Scholar figures reflecting 24 citations total, with her highest cited article receiving 19 citations.[3] In addition, the Petitioner submitted data from Clarivate Analytics (CA) regarding baseline citation rates and percentiles by year of publication for the engineering field. In her initial filing, the Petitioner claimed that her Google Scholar citations from her article published in 2021 ranked among the top 10% of the most cited articles in engineering in that year and, on appeal, she contends that the article still ranks among the top 20%. However, the Petitioner did not indicate whether she factored in any self-citations by her or her coauthors in determining these percentile rankings. Moreover, the documentation from CA cautions 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."

The Petitioner's claim that other bibliometric statements in the record underscore the merit of her most highly cited published article and her impact on the electrical engineering field is likewise unavailing. For example, she points to an article in *Scientometrics* written by Lutz Bornmann and Wemer Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers working in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "[p]ublications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with respect to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation."

With her RFE response, the Petitioner also submitted OpenAlex author metrics, which she claims compare her citation impact to that of other researchers in her field. However, we note that this information also lists her area of research as computer science. Additionally, in referencing her

[2] The Petitioner's second highest cited article received two citations, and her remaining articles received no citations.

[3] As of the RFE response, the Petitioner's second highest cited article received five citations, and her remaining two articles received no citations.

citations metrics from both OpenAlex and CA, the Petitioner relies on citation information concerning the larger fields of engineering and computer science and compares her citation frequency in electrical engineering to that of the larger fields. While electrical engineering is part of the larger field of engineering, and perhaps in some circumstances computer science, she did not submit sufficient evidence confirming that information extrapolated from the larger fields applies equally to each subfield within engineering and computer science, including electrical engineering. Thus, the Petitioner's comparison of her Google Scholar citation data in her field with information regarding the larger fields of engineering and computer science do not sufficiently establish the level of her impact or research success in the field of electrical engineering.

Moreover, citation frequency, which may include self-citations, is quantitative in nature and does not reveal the reasons for the citations, which involve a qualitative analysis. While the Petitioner argues that "the fact that the vast majority of her references are from independent scholars is solid evidence of her impact on the work of her peers," these claims are not persuasive considering her total number of citations as a whole. Furthermore, 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. The Petitioner has not established that her co-authorship of one "highly cited" paper with other researchers demonstrates a record of research success or otherwise renders her well positioned.

As it relates to her peer review activity, the Petitioner provided documentation evidencing her review of publications for journals. The Petitioner, however, did not adequately establish the significance of her review experience or demonstrate that her 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 endeavor.

The Petitioner also claims that she was "crucial" to advancing research funded by the National Science Foundation (NSF) as evidence that she is well positioned to advance her proposed endeavor. She provided a letter from Dr. [redacted] a professor at the [redacted] describing her "leading role" in various research projects funded by the NSF, as well as copies of award abstracts. However, the documentation in the record does not show that the Petitioner herself has been the recipient of any scientific research grants. 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." *Matter of Dhanasar*, 26 I&N Dec. at 893, n.11. Here, the record does not show that the Petitioner, as opposed to the University or her advisor for example, has received funding for her research proposals or future projects.[4]

We also note concerns regarding the Petitioner's plan for future activities. For example, the Petitioner submitted a letter dated April 3, 2024, from Dr. [redacted] stating an intention to hire the Petitioner as a postdoctoral researcher upon completion of her Ph.D. degree. While the Petitioner argues that the Director disregarded this evidence, the letter post-dates the filing of the petition. Eligibility, however, must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*,

[4] While Dr. [redacted] speculates the Petitioner "will be funded by sources such as the National Science Foundation (NSF), Department of Energy (DOE), or similar organizations, which are typically relied upon for research endeavors at ESPN," the record does not contain evidence that the Petitioner has, in fact, received any such funding.

14 I&N Dec. 45, 49 (Comm'r 1971). Moreover, the Petitioner has not adequately explained how this prospective, contingent position well situates herself to advance her proposed endeavor particularly where, as here, the record does not evidence the Petitioner has received any funding for her research or that her specific proposed endeavor has otherwise garnered the interest of potential customers, users, investors, or other relevant entities or individuals.

The record also contains recommendation letters referencing the Petitioner's graduate research. Overall, the letters provide general descriptions of the Petitioner's various research projects and peer review work and praise the Petitioner's knowledge and skills. However, the letters do not further elaborate on or sufficiently explain how the Petitioner's work has been utilized in the field or otherwise constitutes a record of success beyond having been cited by others in their published works. Moreover, the lack of specificity in the letters do not show how her work has affected the field or industry demonstrating a history of accomplishment, well positioning herself to advance her proposed endeavor.

For instance, Dr. [redacted] a researcher, described the use of the Petitioner's research in his own work. He claims he benefited from the Petitioner's research because "it is an example of our suggested distributed TEC technique, and her simulation findings validate the economic and computational advantages of these models." While he then claims a "clear need" for the Petitioner's ongoing work to continue and that "[s]he is advancing the field by supporting the work of others and making her own innovative contributions," he does not offer examples of how the Petitioner's work has been implemented, utilized, or applauded in the field beyond his own articles, or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance her proposed endeavor.

While the record demonstrates that the Petitioner has conducted and published research while pursuing her education and has been invited to present her research, the Petitioner has not shown that this work renders her well positioned to advance her proposed research. While we recognize that research must add information to the pool of knowledge in some way in order 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that her work constitutes a record of success or progress in advancing her research.

Because the Petitioner has not demonstrated she is well positioned to advance her proposed endeavor under *Dhanasar's* second prong, she has not shown that she is eligible for a national interest waiver. Analysis of her eligibility under *Dhanasar's* third prong, therefore, would serve no meaningful purpose. Consequently, we will reserve those remaining issues and arguments. *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).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We, therefore, conclude she has not established that she is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.