U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29337616

Date: JAN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a vascular researcher, 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 reflect they had 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. 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 sustain 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 found 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 an associate research scientist at [redacted] in [redacted], Connecticut conducting vascular research uncovering the underlying mechanisms of aortic aneurysms and aortic dissection (also known as aortic tearing) ultimately aiming to identify therapeutic targets for these conditions. The Petitioner proposed to endeavor to continue their research in this field by performing cold digestion, examining biomechanical factor of aortic disease, and bioinformatic analysis of single and bulk cell ribonucleic acid (RNA) sequencing and data.

For the reasons discussed below, we conclude the Petitioner has 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 did not conclude that the proposed endeavor rose to a level of national importance. The Petitioner's submission consisted of probative letters of support from experts in the fields of vascular biology describing the Petitioner's experience, work, and proposed endeavor in personalized and meaningful detail, the Petitioner's detailed statement of their endeavor submitted with their response to the Director's request for evidence (RFE) describing their research and its potential prospective impact on eventual advances in the treatment of aortic aneurysms and tears. Additionally, the Petitioner submitted documentation indicating the benefit of their proposed research as broader implications for the field, as the results were and are intended to continue to be disseminated to others in the field through scientific journals. Moreover, the Petitioner's endeavor involves critical and emerging bioinformatics and biomechanical technologies in its research.[1] 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, they have demonstrated both the substantial merit and the national importance of their proposed endeavor under 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 Petitioner. The record includes the Petitioner's curriculum vitae, their academic records, published and presented work, reference letters, and documentation of numerous articles that cited to their research findings.[2] Specifically, the Petitioner offered reference letters describing, in meaningful detail, their expertise in cell growth regulation, development of a novel therapeutic strategy rooted in arresting abnormal cell growth in colon cancer patients, and their past record of success in their current and other related fields. Several experts referenced specific examples of how the Petitioner's research has directly affected their field. As corroborating documentation regarding the significance of their work, the Petitioner provided evidence showing that their published work has been frequently cited by independent researchers, and that the rate at which their work has been cited is high relative to others in the field. The Petitioner's experience and expertise as a vascular researcher, published articles, citation evidence, progress in

[1] "Many proposed endeavors that aim to advance STEM (science, technology, engineering, or mathematics) technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. since and technology interest, but also have sufficiently broad potential implications to demonstrate national importance." *See generally* 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual.

[2] "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.

their field, and professional progression at reputed research institutions position them well to advance their proposed endeavor. So the Petitioner has demonstrated that they satisfy the second prong of the *Dhanasar* framework.

C. Whether On Balance a Waiver is Beneficial

The third prong requires the 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.[3] As a vascular researcher with a Ph.D. in medical cell biology and experience as a research scientist at an institution of higher education of repute, the Petitioner possesses considerable education, experience, and expertise in analysis of biological materials at a cellular level to study attributes and behavior under set conditions with an aim to influence outcomes. The record also demonstrates the potential for widespread medical benefits associated with the Petitioner's most recent research. In addition, the Petitioner has documented their past successes in advancing novel research for not only for vascular applications but also discovering new approaches to inhibiting tumor cell growth in colon cancer patients. They have also demonstrated the significance of their proposed work advancing the treatments and therapeutic outcomes to reduce morbidity and mortality. So we conclude that the Petitioner offers contributions of such value that, on balance, they would benefit the United States even if other qualified U.S. workers are available. The Petitioner, therefore, meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude they have established that they are eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

[3] When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor: (1) The person possesses an advanced STEM degree, particularly a Ph.D; (2) The person will be engaged in work furthering a critical and emerging technology of other STEM area important to U.S. competitiveness; and (3) The person is well positioned to advance the proposed STEM endeavor of national importance. *See generally USCIS Policy Manual*, *supra*, at F.5(D)(2).