U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39911215

Date: JAN. 21, 2016

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner requests classification under the 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).

SCOPS denied the petition, concluding that, although the Petitioner qualifies for the classification as a member of the professions holding an advanced degree, the Petitioner 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. 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

SCOPS concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record supports that conclusion. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner is currently conducting research towards a doctoral degree at the [redacted] where he is the lead researcher on a project funded by the National Institutes of Health (NIH). The Petitioner's proposed endeavor is "to develop state-of-the-art medical devices for studying and optimizing thermofluidic systems, focusing on applications such as cryopreservation of organs and cells and rapid reoxygenation of affected tissues . . . to enhance medical procedures and patient outcomes in areas like organ transplantation and emergency medicine." The Petitioner states that to further this endeavor, he is working to develop "a highly efficient treatment approach for hypoxia by generating micro- and nano-sized oxygen bubbles" and he "intend[s] to administer these oxygen-rich bubbles intravenously to patients experiencing tissue-level oxygen deficiency." The Petitioner states that this "oxygen nanobubble solution . . . could significantly enhance survival rates and neurological outcomes in cardiac arrest, hypoxic respiratory failure, and similar emergencies."

SCOPS determined that the record did not establish the substantial merit or national importance of the Petitioner's proposed endeavor, further concluding that the Petitioner did not demonstrate that he is well positioned to advance the endeavor or that it would be beneficial to the United States to grant a waiver of the job offer requirement. On appeal, the Petitioner points to inconsistencies in SCOPS' analysis and asserts that SCOPS did not fully review the entirety of the evidence. Upon review, we disagree with SCOPS' determination concerning whether the Petitioner satisfied the requirements under *Dhanasar's* first prong. However, we agree that the Petitioner has not established eligibility under the second prong of the *Dhanasar* analytical framework.

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.*

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also

stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner's endeavor is to continue his research in thermofluidic systems, focusing on the reoxygenation of tissues for use in emergency medical treatment and the cryopreservation of transplant organs. Because the Petitioner's endeavor involves continued research toward improving treatment for hypoxia and a method of organ preservation, he has demonstrated the substantial merit of his proposed endeavor.

Concerning our evaluation of whether a proposed endeavor has national importance, we consider its potential prospective impact. *Id.* According to a letter of support from his Ph.D. supervisor, the Petitioner is working on research funded by NIH that is "focused on treating hypoxia via the rapid delivery of high concentration micro-nano oxygen bubbles to patients." He serves as the lead engineer on the project and works directly with the project's principal investigator at the [redacted]. This letter and another from an assistant professor explain the importance of the Petitioner's continued research on an approach that shows the possibility of blood reoxygenation in a matter of minutes to seconds—a method, they indicate, which could have vast applications for resuscitative medicine

As evidence that his proposed research has national importance, the Petitioner presented information about organ preservation, tissue reoxygenation, and hypoxia as it relates to emergency care and mortality. He submitted a statement detailing his research methods. Additionally, the Petitioner submitted documentation indicating that the benefit of his proposed research offers broader implications for the field of emergency medical treatment and organ preservation, as the results are disseminated to others in the field through scientific journals and conferences.

We withdraw SCOPS' conclusion concerning the national importance of the Petitioner's proposed endeavor. The Petitioner has established, by a preponderance of the evidence, that he has met the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

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

The evidence shows that the Petitioner has earned a Master of Science degree in Mechanical Engineering from the [redacted] and the record includes his curriculum vitae, academic records, published and presented work, and documentation of articles that cite to his research findings. In consideration with other evidence to assess an individual's qualifications under the second prong, we consider 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 an especially

positive factor. *See generally* 6 *USCIS Policy Manual* F.5(D)(4), https://www.uscis.gov/policy-manual. We note, however, that the Petitioner did not possess a Ph.D. in his field when he filed the instant petition, and he has not otherwise shown that his academic accomplishments alone are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees, including two master of science degrees and a Ph.D. *Matter of Dhanasar*, 26 I&N Dec. at 891. We look to a variety of factors in determining whether an individual is well positioned to advance a proposed endeavor, and education is only one factor among many that may contribute to that determination.

Further, the record does not sufficiently establish his success in related or similar efforts. The record includes letters from researchers who have worked directly with the Petitioner and those in the field who have cited his research in their own work. Most of this evidence, however, references his research in the field of thermofluidic mechanics and the record does not establish how his previous research relates to his proposed endeavor. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

For example, the aforementioned letters of support generally describe the possible implications of his work in heat transfer and energy optimization for, according to one letter, "industries such as food processing, glass manufacturing, and refrigeration." This letter goes on to state that one of the Petitioner's research approaches "aids in the design of more effective heat exchange devices and promotes energy conservation by improving thermal efficiency with less power consumption." Other letters discuss how his research is advancing thermofluidic system efficiency and how it has contributed to the research of others, pointing to his published findings and citation information. It is not clear how his published and cited work relates to his current endeavor's focus on cryopreservation or tissue reoxygenation.

Further, while these letters reference Petitioner's research and "role in advancing heat transfer research and linking theory to real-world engineering applications," they do not identify any such applications, and the record does not otherwise contain evidence of the utilization of research related to the Petitioner's findings beyond their use by other researchers to support their own work. For instance, one letter states the Petitioner's work helped the researchers "confirm their calculations, set up realistic conditions for electrical heating, and analyze energy loss." Other letters of support explain that his work helped validate the results of another study that "examined the effects of an internal heat source on airflow and temperature when a spinning cylinder is present," and how researchers citing his work "acknowledged its contribution to understanding shear-driven flow and improving fluid dynamics models for practical applications." In addition, we note that while the Petitioner has highlighted the fact that his research has resulted in two peer-reviewed conference articles and has been cited a total of 15 times, he has not provided comparative citation data for researchers in his field or other relevant evidence to support his claims that his published work is "widely recognized and relied upon in the field of fluid mechanics" or that he has had a major influence on the work of other scholars in his field.

The evidence of record does not speak to any level of experience in tissue reoxygenation that the Petitioner has garnered beyond his most recent work towards completing his Ph.D., which he anticipated would be published in the near future at the time of filing the petition. The record does not include evidence to indicate how or whether that work has yet had any influence in his field of endeavor or has received interest from parties that could support the endeavor's advancement. We

note that his Ph.D. supervisor states in a letter of support that, prior to his work in hypoxia treatment, the Petitioner made "important contributions in understanding the cryopreservation of cells" by developing "the first (to my knowledge) model of coupled heat transfer and ice formation which properly capture the physics of ice crystal growth in supercooled water approaching the glass transition temperature." The record, however, does not include evidence of how or whether that development is or will be utilized in the field or otherwise further advance the Petitioner's proposed endeavor.

Regarding the Petitioner's model or plan for future activities and any progress toward achieving the proposed endeavor, we also similarly conclude that the evidence in the record does not demonstrate that the Petitioner is well-positioned to advance the endeavor. The Petitioner has described his intention to continue his research in his capacity as a doctoral student and in postdoctoral study. However, apart from his principal advisor's interest in hiring him as a postdoctoral researcher and interest expressed by his university's medical team in continuing their collaborative work, the record does not contain evidence indicating that his endeavor has received interest from any entities relevant to potentially advancing it beyond stages of research for use in medical settings.

We also note that the proposed endeavor, as originally described, involved continuing his doctoral work and seeking a postdoctoral position, and that he was not yet eligible to hold a postdoctoral position at the time he filed his petition. Because the Petitioner's proposed endeavor was, in part, to pursue further training at a future time when he becomes eligible for that training, we conclude that the evidence in the record related to the Petitioner's plan for his future activities and his progress towards achieving the proposed endeavor does not support a finding that he is well-positioned to advance it. The Petitioner has not established that, as a student, he was well positioned to engage in activities for which he had not yet obtained the necessary credentials and qualifications. On appeal, the Petitioner relies primarily upon the evidence he previously submitted and explains that he will continue to pursue his current vein of research, but he has not explained how his continued research in terms of his endeavor will be actualized in the form of medical devices for use on patients. The evidence of record demonstrates that the Petitioner is conducting research in a field of potential importance to healthcare, but it does not sufficiently demonstrate that he is well positioned to realize an endeavor to develop medical devices for the scope of use he has envisioned through his proposed endeavor.

Not every individual who has conducted original research, published findings, and provided peer review service will be found to be well positioned to advance a proposed endeavor. Rather, we must examine the factors set forth in *Matter of Dhanasar* to determine whether, for instance, the individual's education, skills, and record of success, their model or plan for future activities, their progress towards achieving the proposed endeavor, and the generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner's knowledge, skills, and record of success in related efforts, as demonstrated by his education, publication history, citation record, and peer review service, are positive factors. However, they are not sufficient to overcome the lack of evidence demonstrating the Petitioner's model or plan for future activities, his progress toward achieving the endeavor, or interest from potential investors or other relevant entities. In considering the record in totality, we conclude that the Petitioner has not established that he is well positioned to advance the proposed endeavor. The record does not demonstrate a history of success in related or similar efforts or provide a sufficiently comprehensive model or plan for how he will carry out his endeavor.

The overall evidence of record does not show that the Petitioner is well positioned to advance his proposed endeavor. Accordingly, the Petitioner has not demonstrated that he satisfies the second prong of the *Dhanasar* framework.

The record does not establish that the Petitioner is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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 demonstrated that the proposed endeavor has national importance. As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.