U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29344085

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a senior hardware engineer, seeks classification as a member of the professions holding an advanced degree. *See* 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 EB-2 immigrant 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.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she had not 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 dismiss 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. Section 203(b)(2)(B)(i) of the Act. Next, a petitioner must then demonstrate 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[1] *See also 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 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] Accordingly, the remaining issue to be determined on appeal 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.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

In a statement submitted with the petition, the Petitioner stated that he intends to "design state-of-the-art wireless sensors, high-speed receivers, and mixed-mode integrated circuits using complex architectures in order to implement next generation communication systems that have high bandwidth, high data rates, and high efficiencies." He further indicated that he intends to pursue a position as a senior hardware engineer with [redacted] or a similar company, where he will conduct preliminary research and critical technology development of the sixth-generation communication network technology and the new generation of Wi-Fi wireless transmission technology. The Petitioner also provided personal statements and supporting evidence in the form of recommendation letters, academic records, resume, publications and citation statistics, and reports and articles from the industry.[3]

The Director determined that the Petitioner's proposed endeavor has both substantial merit and national importance. While we agree that the Petitioner's proposed endeavor has substantial merit, we do not agree with the Director's determination that the endeavor has national importance for the reasons outlined below.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. 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

[2] The record demonstrates that the Petitioner holds a Ph. D. in electrical engineering from [redacted] in Taiwan.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

area, for instance, may well be understood to have national importance." *Id.* at 890. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

The Petitioner intends to work for [redacted] or a similar company in the United States as a senior hardware engineer and claimed his duties will include research in the field of integrated circuit and semiconductor design. While the record describes his past work and research, the Petitioner offers little detail about the proposed endeavor. In other words, the Petitioner describes the proposed endeavor in terms of what he has already done, but he does not outline in specific detail any new design projects or tasks he will undertake. The Petitioner generally asserts that his work will have broad application to a variety of technical areas and communication products, such as smartphones, Wi-Fi systems, Bluetooth wireless systems, and global positioning systems.

Although the Petitioner also described his proposed endeavor as conducting research, we have little information concerning any specific research projects. Here, we discern a distinction between hardware engineering duties as part of his senior hardware engineer role and research as part of his proposed endeavor, but we do not have sufficient information with which to determine whether or how they differ. It is not known how much time the Petitioner would devote to his proposed research endeavor while also executing his hardware engineering duties for his employer.

The Petitioner submitted evidence of his publications and citation record to establish how his past research success suggests that his future endeavor will have a similar impact. Most of the Petitioner's research publications were produced while the Petitioner was a graduate researcher. While we acknowledge that evidence of the impact of his past work provides a basis to suggest that his future work will have a similar impact, this past research acclaim does not in itself establish the national importance of the proposed endeavor. Here, the Petitioner has not identified the specific nature of his proposed future activities so that we might determine the endeavor's possible impact, nor has he identified how any future research would be disseminated into the community such that its potential can be properly evaluated. Moreover, as noted above, the Petitioner has not sufficiently explained what portion of his time will be devoted to the hardware engineering duties, and how performance of those duties in the course of his employment could detract from the time he might devote to research. The Petitioner has not established how his past research record supports a finding that his future work will have a similar impact or that such impact would rise to the level of national importance.

Even if we assume that the Petitioner conducts research as a part of his duties at [redacted] or a similar employer, this still does not adequately address how his research would be known widely enough to have a broader impact rising to the level of national interest. As [redacted] and other similar entities presumably solicit business from clients and customers, it is not apparent that any internal research discoveries conducted during the course of his employment would be made publicly available rather than maintained as proprietary information. In addition, the Petitioner does not offer a sufficiently direct connection between his research and integrated circuit design improvements that might be produced as a result of his findings in the field of semiconductor research. Accordingly, we conclude that the Petitioner must establish a more direct connection between the proposed endeavor and the broader implications of it.

The record also includes letters of recommendation from individuals who speak favorably about how the Petitioner's past research and technical achievements have contributed to communication and networking technologies. In examining the authors' claims concerning the Petitioner's past research and achievements, we observe that the authors focus on those achievements and do not offer information concerning the Petitioner's proposed endeavor. Overall, we observe that the authors broadly report the same information about the Petitioner's past research topics and technical achievements. While research must add information to the pool of knowledge in some way in order to be accepted for publication, this alone is insufficient to substantiate a claim of impact to the field. The authors offer little detail to substantiate a finding that the Petitioner's research has affected communication and networking technologies or the semiconductor industry as a whole.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc*., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id*. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id*. Here, although the authors discuss the nature of the work the Petitioner has performed in the past, they offer little specific information concerning the Petitioner's prospective future endeavor. As such, these letters are of little probative value as they do not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Petitioner also presented articles discussing the importance of wireless and networking technologies. However, in determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. 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*. While the articles offer useful background information, they are of little probative value in this matter as they do not discuss the impact of the Petitioner's specific proposed endeavor.

Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. The imprecise nature of the Petitioner's proposed future research does not sufficiently demonstrate how it would impact wireless and networking technologies or the semiconductor field more broadly, as opposed to being limited to his employer and its customers. Simply obtaining employment in a worthy field or industry, such as integrated circuit design, does not warrant a national interest waiver. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's proposed research does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893.

In addition, the Petitioner has not sufficiently demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. The evidence does not show that the Petitioner's activities performed during his

employment with [redacted] or other similar employer would have economic impacts beyond the clients and customers served by his employer such that it will have broader implications for businesses in the United States.

Finally, we note the Petitioner's statements regarding his expertise and prior career accomplishments in the field of wireless and networking technologies. These statements, however, address aspects of the second *Dhanasar* prong but do not address how the proposed endeavor in the United States has broader implications beyond his immediate employer and its clients, as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner's focus on the importance of the semiconductor field in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not adequately described his proposed endeavor. Furthermore, to the extent that his proposed endeavor can be understood, we conclude that the record does not contain sufficient evidence to establish its national importance, as required by the first *Dhanasar* prong, and we will therefore withdraw the Director's finding on this issue. In any future national interest waiver proceedings, the Petitioner must establish that he qualifies 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 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. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

In denying the petition, the Director concluded that that the Petitioner had not established that he is well positioned to advance his proposed endeavor, based on a review of the Petitioner's education, publication and citation history, recommendation letters, and progress both in his career and towards his proposed endeavor. On appeal, the Petitioner contends that the Director did not apply the proper standard of proof, instead imposing a standard stricter than the preponderance of the evidence standard. The Petitioner further relies on *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), arguing that the Director erroneously applied the law by not considering the totality of the evidence provided, specifically the Petitioner's personal statements, letters of recommendation, academic documents, and publications and citation history.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the 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.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of the evidence.

Upon de novo review, we agree with the Director's determination that the Petitioner is not well positioned to advance the proposed endeavor.

The Petitioner earned a Ph. D. in electrical engineering in July 2020. While this is sufficient to show his eligibility for the underlying immigrant classification, and is sufficient to show a plan for continued employment in hardware engineering, it does not establish that his level of expertise is at least significantly above that ordinarily encountered in that field. The Petitioner has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.[4]

Regarding prior experience, the Petitioner claimed to have two years of experience working as a hardware engineer for [redacted] at the time of filing. The record, however, contains no documentation or verification from this employer confirming the Petitioner's employment or describing the duties he performed in this role. The record as currently constituted does not provide an overview of the Petitioner's work experience in the field and therefore does not reflect how the Petitioner's prior performance of his claimed hardware engineering duties is either a similar effort as that of his proposed endeavor or how it constitutes a record of success.

Moreover, the Petitioner's prior activities and technical achievements as described in the recommendation letters do not demonstrate that they are either a similar effort as that of his proposed endeavor or how they constitutes a record of success. Although the letters speak generally of the Petitioner's realization of certain technical achievements and skill in his field, they do not identify any recognition, achievements, or significant contributions to his field that tend to reflect that the Petitioner is well positioned to advance his endeavor. They similarly do not demonstrate the development of a plan or model for future activities that the Petitioner has developed or played a significant role in developing. General observations that a petitioner has extensive experience and achievements in their field are not sufficient alone for a petitioner to meet their burden of proof. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. Here, we conclude that letters are not sufficiently detailed or persuasive for the Petitioner to meet his burden of proof.

Similarly, the Petitioner's history of publishing the results of his research does not show a record of success relating to his proposed endeavor. The Petitioner argues that his peer reviewed journal articles, conference presentations, and number of citations to his work by other researchers shows that he is well positioned to advance his endeavor. Although the elevated ranking of these journals, as noted by the Petitioner, may be one factor contributing to a showing of an individual researcher's record of success, we will not assume that every article published in a high-ranking journal is indicative of a record of success. In addition, the Petitioner's relatively small number of published papers counters the positive consideration of his record due to the prestige of the journals in which he has published.

While the Petitioner's documentation indicates education and experience in the field, and includes recommendation letters praising his research and technical achievements, such evidence of his past

[4] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

experience and accomplishments does not rise to the level of rendering him well positioned to advance the proposed endeavor. The letters here primarily discuss the Petitioner's accomplishments while acting as a graduate researcher rather than discussing a past record of success in similar or related efforts, a model or plan for future activities, interest from potential users, or other factors that would help establish that the petitioner is well-positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Finally, the Petitioner proposes competing proposed endeavors (i.e., working as a hardware engineering for [redacted] or a similar entity and conducting integrated circuit research). The Petitioner's inconsistent statements cast doubt on his ultimate proposed endeavor which undermines his eligibility for the benefit. *See Matter of Ho*, 19 I&N Dec. 582 at 591 ("Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition"). As stated in our discussion of the first prong of the *Dhanasar* framework, the Petitioner's description of his endeavor is wide-ranging and generally vague in its goals, complicating any evaluation of the Petitioner's ability to advance the endeavor. The Petitioner has not provided evidence of qualifications beyond those expected of an individual working in a hardware engineering position. As the Petitioner has not established that he has developed an endeavor that rises to a level commensurate with that of national importance, we cannot make a determination as to whether the Petitioner is well positioned to potentially achieve an endeavor. The Petitioner has not established that he is well positioned to achieve a proposed endeavor.

For the above stated reasons, the Petitioner has not established eligibility under the second *Dhanasar* prong.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, 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. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification and the shortage of professionals within his area of expertise. However, as the Petitioner has not established the national importance of his proposed endeavor and that he is well positioned to advance that endeavor as required by the first and second prongs of the *Dhanasar* framework, he is not eligible for a national interest waiver. Since these issues are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.