U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 29229554

Date: JAN. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in waste conversion for energy storage, 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 did not qualify for classification as a member of the professions holding an advanced degree and they had not established 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 petition 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. The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R § 204.5(g)(1) requires letters from current or

former employers include the name, address, and title of the writer, and a specific description of the duties performed.

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 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, 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 petitioner 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

### A. Well-Positioned To Advance The Proposed Endeavor

Our authority over USCIS service centers, the office that adjudicated the immigrant petition, is comparable to the relationship between a court of appeals and a district court. So based on a de novo review we will adopt and affirm the Director's decision that the Petitioner did not demonstrate that

they were well-positioned to advance their proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Gomez-Mejia v. INS,* 56 F.3d 700, 702 (5th Cir. 1995).

The Director gave individualized consideration to the evidence the Petitioner submitted with their initial petition and their RFE response.[1] We agree with the Director's well-reasoned decision that the Petitioner does not qualify for a national interest waiver. The second prong shifts the focus from the proposed endeavor to the foreign national. *See Dhanasar*, 26 I&M Dec. at 880. As the Director correctly concluded, the evidence in the record did not sufficiently demonstrate whether the Petitioner's progress towards achieving the goals of the proposed research, their record of success in similar efforts, or generation of interest among relevant parties supported their positioning to advance their proposed endeavor.

In evaluating whether a petitioner is well positioned to advance their proposed endeavor, we review the following and any other relevant factors:

- A petitioner's education, skill, knowledge, and record of success in related or similar efforts;
- A petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing;
- Any progress towards achieving the proposed endeavor; and
- The interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

The Petitioner discussed their publications. But, whilst these publications reflect the Petitioner has been engaged in research in the past, they do not sufficiently describe how the published articles demonstrated a record of success or how they evidenced a related or similar effort as the research they propose to undertake. Simply submitting proof of publications without sufficient evidence to describe how those publications show progress towards achieving the goals of the proposed research or a record of success in similar efforts are not sufficient to illuminate a Petitioner's position to advance their proposed endeavor. And whilst the Petitioner has submitted evidence of a total citation number that has grown since the initial filing, it is not evident from the evidence in the record that the citations reflect interest or support garnered by the Petitioner from potential customer, users, investors, or other relevant entities or persons. Nor, as the Director stated, is it clear that the citations are self-citations as opposed to independent citations. And the letters of support the Petitioner submitted from individuals who spoke of the Petitioner in effusive terms, simply described the Petitioner's past research. The letters did not illuminate the Petitioner's proposed endeavor, or as the Director correctly noted, how the Petitioner's past research provides a foundation for their future research in their proposed endeavor.

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

Moreover, we note that the Petitioner proposes to conduct their proposed endeavor under the auspices of their graduate teaching assistant position at [redacted]. The Form I-140 petition submitted by the Petitioner indicates that the Petitioner's graduate teaching assistant position is part-time 20 hours per week. The record does not adequately describe how the Petitioner's proposed endeavor's objectives can be realized through a part time conduit.[2]

B. Employment Based Second Preference Category Eligibility

We withdraw the Director's conclusion regarding the Petitioner's categorical eligibility for EB-2 permanent immigrant classification. The Petitioner did not initially specify if they sought EB-2 classification as an advanced degree professional or as an individual of exceptional ability. In support of their educational qualifications, the Petitioner initially submitted a copy of their master's degree certificate, their bachelor's degree certificate, and a U.S equivalency summary from World Education Services marked "Not-Official." The Petitioner earned a bachelor of technology in pure and applied physics from [redacted] in [redacted], Nigeria. They also earned a master of science in fundamental and applied sciences from [redacted] in [redacted], Malaysia. The Director's RFE focused exclusively on seeking evidence of the Petitioner's exceptional ability and did not seek evidence to evaluate the Petitioner's eligibility for classification as an advanced degree professional.

When evaluating foreign educational credentials, the Director may consider a credentials evaluation performed by an independent credentials evaluation when that evaluation provides a credible, logical, and well-documented case for that equivalency determination based solely on the noncitizen's foreign degree. *See generally* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policymanual. The Director's decision stated that the credential evaluation and authentication report from World Education Service did not specify if the Petitioner "completed the foreign equivalent of a U.S. high school degree," did not contain "a detailed explanation of the evaluated material," and did not "contain a brief stating the evaluator's qualifications and experience." The Director did not describe why the Petitioner's submitted documentation supporting their educational equivalency was incredible, illogical, or insufficiently documented. So we will withdraw the Director's conclusion that the Petitioner was ineligible for EB-2 classification. But, since the resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal, further investigation and analysis of the Petitioner's categorical eligibility for EB-2 classification by issuing a request for

[2] The Petitioner asserts that their foreign advanced degree credential consisting of a master of science degree in fundamental and applied science constitutes an especially positive factor to support how well positioned they are to advance their proposed endeavor. "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. In the first instance, as we discuss herein, the evidence in the record does not convincingly demonstrate the Petitioner has earned an advanced degree. And even if the Petitioner's foreign degree credential were the single source equivalent of a master's and thus advanced degree, it is not a Ph.D., which is a credential of particular interest. Moreover, it is not clear how the "fundamental and applied science" focus of the Petitioner's master's degree related to the waste conversion to activated carbon materials research the Petitioner intended to perform via their proposed endeavor. In any event, a degree in and of itself is not a basis to determine that a person is well positioned to advance a proposed endeavor. *Id.*

evidence would serve no legal purpose. The Petitioner should be prepared to address their categorical eligibility for EB-2 classification in any future proceedings requiring a petitioner to demonstrate eligibility as an advanced degree professional or individual of exceptional ability. Specifically, the Petitioner should be prepared to explain how a letter from World Education Services accompanying the credential evaluation and authentication report outlined World Education Services' qualifications and expertise to render their conclusions and established their qualifications and experience as an evaluator. And the Petitioner should clarify how the "West African Senior School Certificate" mentioned in the credential evaluation and authentication report's description of the minimum qualifications required for entry into the Petitioner's degree programs credibly and logically established a requirement of admission equivalent to a U.S. high school degree. Additionally, the Petitioner may wish to describe how the credential evaluation and authentication report contained "pertinent details" of the Petitioner's educational credentials in a well-documented manner.

## III. CONCLUSION

Because the Petitioner has not established that the Petitioner is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, they are not eligible for a national interest waiver. We reserve our opinion regarding whether the record demonstrates the Petitioner's categorial eligibility for EB-2 permanent immigrant classification or satisfies the first or third *Dhanasar* prong. *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).

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that the Petitioner does not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification.

**ORDER:** The appeal is dismissed.