U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39106520

Date: JUL. 02, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a researcher in the field of communications and networking technologies, 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).

Service Center Operations (SCOPS) denied the petition, concluding that while the Petitioner established his eligibility for the EB-2 classification, he did not establish that he merited a waiver of the classification's job offer requirement under the framework provided in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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
- On balance, waiving the job offer requirement would benefit the United States.

Id.

We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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). Upon review, we will grant the motion and sustain the appeal.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i),

[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).

(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

At the time of filing, the Petitioner was employed as a postdoctoral researcher[2] at [redacted] University. His proposed endeavor is exploring and advancing "cutting edge technologies in wireless communications and networking to guarantee top-tier communication quality across diverse applications." In our decision on appeal, we agreed with SCOPS' determination that the Petitioner is eligible for EB-2 classification as a member of the professions holding an advanced degree. But contrary to SCOPS, we also concluded that the Petitioner had established the national importance of his proposed endeavor and that he was well positioned to advance that endeavor. We ultimately determined that the Petitioner did not merit a national interest waiver because he did not show that, on balance, a waiver of the job offer requirement would benefit the United States.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on our precedent decision in *Dhanasar* and the *USCIS Policy Manual*, and questions our rationale in pointing out that he already holds the position in which he proposes to engage in his endeavor.

Dhanasar provides several non-exhaustive factors that may be considered in conducting the balancing in the third prong of the framework. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. In our appeal decision, we discussed the Petitioner's current employment only in the context of whether it would be impractical for him to obtain a labor certification, which is one of the named factors. We also noted that the evidence in the record, including reports regarding the wireless industry and the previous administration's investments in advanced communication's technology, did not support the claimed urgency of the national interest in the Petitioner's proposed endeavor. In response, the Petitioner asserts that the fact that he currently holds this research position is irrelevant to whether it would be impractical for him to obtain a labor certification, but provides no explanation of why that process would be impractical in his case.

The Petitioner also asserts that the urgency of the national interest in his proposed endeavor is supported by the listing of artificial intelligence and communication and networking technologies as critical and emerging technologies (CETs) by the National Science and Technology Council. We acknowledge that the United States' competitiveness in STEM fields such as the Petitioner's may be a factor in showing that the national interest in his work is sufficiently urgent. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), www.uscis.gov/policy-manual.

More importantly, an advanced STEM degree (particularly a Ph.D.) together with evidence of engagement in work furthering a CET are strong positive factors in determining whether the United States may benefit from a petitioner's contributions, regardless of the availability of other U.S. workers. *Id.* at F.5(D)(2). Here, the Petitioner's Ph.D. in electrical engineering, proposed endeavor to continue research in a CET, and positioning to advance that endeavor are sufficient to support his eligibility under the third prong of the *Dhanasar* framework. Accordingly, we conclude that he has established his eligibility for the EB-2 classification and that he merits a waiver of that classifications job offer requirement, and thus of a labor certification.

[2] The record indicates that the Petitioner is currently employed as an associate research professor with the same institution.

ORDER: The motion to reconsider is granted and the appeal sustained.