U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32289575

Date: JULY 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he 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.

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. While neither the statute nor the pertinent regulations define the term "national interest," *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The remaining issue to be determined 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.[3]

With respect to his proposed endeavor, the Petitioner asserted that he plans "to develop solutions for protecting perishable foods from decay and providing portable drinking water to local environments in order to improve food and water security and safety." He further stated:

> To progress this endeavor, I will utilize my extensive experience with advanced mathematical analysis, algebra, data analysis, and their application in various domains. My work will continue to be circulated in the field through my peer-reviewed publications in journals and conference proceedings.
>
> I intend to pursue a position as an assistant professor in the United States. I am most interested in pursuing this position with the [redacted] My planned research topics include applications of Semigroup of linear operators, in particular combining this with relevant mathematical models in order to further develop simpler solutions for protecting perishable foods from decay and providing portable drinking water to local environments so as to improve food and water security and safety.

While the Petitioner indicated that he was "[e]nrolled in graduate courses at [redacted] from August 2020 until January 2022, the record does not indicate if he received a degree from [redacted] He also noted that he served as a "Graduate Teaching Assistant" at [redacted] until May 2021, but his Form ETA-750B, Statement of Qualifications of Alien, and curriculum vitae do not list any employment after that date.[4]

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[2] The record indicates that the Petitioner received a Master of Science degree in Mathematics from the [redacted] in 2015.

[3] The Director determined that the Petitioner did not meet the second and third prongs of the *Dhanasar* analytical framework. To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

[4] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer.

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. 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. *Id*. at 889.

In his decision denying the petition, the Director determined that the Petitioner had demonstrated both the substantial merit and national importance of his proposed endeavor. The record supports this conclusion. For example, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals. Accordingly, we agree with the Director that the Petitioner meets 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. *Id*. at 890.

The record includes documentation of the Petitioner's curriculum vitae, academic credentials, published articles, and Google Scholar profile. The Petitioner also provided citation metrics and letters of support from four professors from Nigeria discussing his work. He contends on appeal that his "citation and publication record demonstrate that he is well positioned to advance his proposed endeavor." In addition, the Petitioner asserts that he has made "progress towards achieving the proposed endeavor" and that his work has "attracted the interest of several relevant parties." For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor under the second prong of the *Dhanasar* analytical framework.

In letters supporting the petition, the four references discussed the Petitioner's mathematical research projects. For example, Dr. K-R-, a professor at [redacted] indicated that the Petitioner "is a mathematician performing sophisticated research into algebraic and functional analysis equations for problem solving in important areas, including international security challenges." Dr. K-R- asserted that the Petititioner "created a model for predicting violence and terrorism in global communities," but he did not provide specific examples indicating that the Petitioner's model has been utilized for risk mitigation by specific communities or organizations, or otherwise constitutes a record of success in the field of mathematics.

Likewise, Dr. A-S-I-, another professor at [redacted] stated: "Using semigroups of linear operators, [the Petitioner] developed an approach for water purification and for maintaining perishable food items before they go bad." Dr. A-S-I- also indicated that the Petitioner "sought to improve the cost effectiveness of perishable food items in the context of environmental contamination and non-

point source pollution through a variety of mathematical models," but he does not explain how this work has affected the water or food safety industries or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance his proposed endeavor.

In addition, Dr. P-O-E-, a professor at [redacted], asserted that the Petitioner "began investigations into the complex semigroups of linear operators" and "developed a framework for reasonable prediction of food perishability, accounting for the nutritional levels of foods." Dr. P-O-E- further indicated that the Petitioner's "frameworks provide the means for leading professionals to calculate optimal food storage methods for longevity and freshness," but he does not offer examples of how the Petitioner's mathematical frameworks and other findings have been implemented, utilized, or applauded in the food industry, or otherwise demonstrate that he is well positioned to advance his endeavor.

Furthermore, Dr. O-B-L-, a former professor at both [redacted] and [redacted] in Nigeria, stated that the Petitioner "has provided a mathematical framework for modeling and analyzing the complex processes involved in non-point source pollution. In developing these models, [the Petitioner] contributes to understanding the behavior of pollutants in the environment and designing effective pollution control and water purification strategies." Again, the Petitioner has not shown that his mathematical models show success or progress at a level that renders him well positioned to advance his proposed endeavor.

Dr. O-B-L- also noted that the Petitioner has published his work in *Journal of Computer Science and Computational Mathematics*, *Asian Pacific Journal of Mathematics and Applications*, *Earthline Journal of Mathematical Sciences*, and *European Journal of Pure and Applied Mathematics*. The Petitioner asserts on appeal that his research "has clearly appeared in multiple top tier and international journals" and that the publications have "high impact factors and elevated rankings," but the record does not include evidence of journal rankings or impact factor data to corroborate his claims.[5]

As it relates to the citation of the Petitioner's work, the Petitioner provided his Google Scholar profile from September 2023, December 2023, and February 2024. The February 2024 information from Google Scholar indicates that his four highest cited articles, entitled [redacted] each received 10, 10, 7, and 6 citations, respectively.[6] The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors. In fact, almost all the citations to the aforementioned articles are self-citations by the Petitioner and his coauthors.[7] Accordingly, the Petitioner has not shown that his published work has attracted a sufficient level of interest from relevant parties or otherwise renders him well positioned to advance his proposed endeavor.

[5] Regardless, that a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in their field.

[6] None of the Petitioner's remaining articles were cited to more than five times.

[7] *See* information from https://scholar.google.com/citations?user=[redacted], accessed on July 16, 2024.

The Petitioner also provided data from Clarivate Analytics (InCites Essential Science Indicators) regarding baseline citation rates and percentiles by year of publication for the mathematics research field. The Petitioner contends that his paper coauthored with three others, entitled [redacted] ranked among "the top 10% most cited articles published in 2020 in Mathematics" based on the number of citations it has received (10) since that time. He also asserts that he has four other articles placing among the top 10% in the field for their respective publication years. The Petitioner did not indicate whether he factored in any self-citations in determining these percentile rankings. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

Additionally, the Petitioner presented an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with respect to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation." Moreover, regarding "self-citations," the authors state that "if the question of an evaluation study explicitly means to what extent a scientist has influenced other scientists' work, self-citations should be obviously ignored. In every evaluation study, however, it should be checked whether a researcher cites him or herself excessively." The Petitioner in this case has not shown that the level at which he and his coauthors cite to their own work is moderate rather than excessive.

Furthermore, the Petitioner submitted OpenAlex author metrics which he claims compares his citation impact to that of other researchers. While this information lists a percentile ranking of 98.75%, it is based on the Petitioner's high frequency of self-citation, which according to the above *Scientometrics* article, "should be obviously ignored" when assessing a researcher's impact.

Moreover, as it relates to the Petitioner's education, while his Master of Science degree renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves 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, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. 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.

Regarding the Petitioner's plan for future activities, he stated that he intended "to pursue a position as an assistant professor in the United States. I am most interested in pursuing this position with the [redacted] With respect to the Petitioner obtaining a position at a U.S. university or research institute, he did not provide documentation from any such organization showing their communications or identifying the specific research projects he intends to pursue on the organization's behalf. Without sufficient evidence demonstrating the means or financial support to undertake his proposed mathematics research in the United States, the Petitioner has not demonstrated that his plan for future activities renders him well positioned to advance the proposed endeavor.[8]

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and professional career, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id*. at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the mathematics field or that it has generated substantial positive discourse in the academic community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing mathematics research relating to solutions for protecting perishable foods and providing safe drinking water. As the Petitioner has not demonstrated that is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

Because the documentation in the record does not establish that the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver. Since this issue is 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).

As the Petitioner has not met the requisite second prong 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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[8] For example, the Petitioner did not offer evidence showing that he has received funding for his research proposals or future projects. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id*. at 893, n.11.