U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31285741

Date: JULY 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher and a university teacher of applied mathematics, seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 sustain 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.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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

[1] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The record supports that conclusion. 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.

The Petitioner is currently teaching and conducting research with the Department of Engineering and Applied Science at [redacted] He proposes to continue his research on resilient systems and computational mechanics with the goal of developing structural systems and design strategies to enhance the performance and safety of structures; improve structures' disaster-resistant design; and improve the repair and retrofit of deficient and aging civil infrastructure to ensure their post-disaster functionality. Overall, his resilient systems and computational mechanics research would have "the goal of either introducing new systems or improving the current resilient systems." In addition, he would continue his research by prototyping a novel alloy-based damper device he has conceptualized and conducting experimental tests on the damper device.

For the first prong of the Dhanasar framework, the Director determined that the Petitioner's proposed endeavor as described above has substantial merit and is of national importance. Upon review of the record, we agree that the Petitioner has established that he meets the first prong of the Dhanasar framework.

A. Well-Positioned to Advance the Proposed Endeavor

The second 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 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 Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner meets *Dhanasar's* second prong. Upon de novo review, we conclude that the Petitioner has established by a preponderance of the evidence that he is well-positioned to advance his proposed endeavor.

[2] The record shows that the Petitioner received a Master of Science in civil engineering from [redacted] in 2019.

The record includes the following: the Petitioner's curriculum vitae; academic records; published and presented work; peer review activity; documentation of articles that cited to his research findings; recommendation letters from academic research colleagues; and documentation relating to a National Science Federation grant. The Petitioner completed two master of science degrees, one in civil engineering from [redacted] in 2019 and another in earthquake engineering from [redacted] of Science and Technology in 2008.[3] As noted above, the Petitioner is currently teaching applied mathematics and conducting research with the Department of Engineering and Applied Science at [redacted]. Evidence shows the Petitioner has been engaged in research related to his degrees and has authored peer-reviewed articles of his research which are published in multiple reputable journals and conferences.

The Petitioner submitted recommendation letters from fellow academic researchers who describe, in meaningful detail, their research expertise and the significance of the Petitioner's research with novel algorithms and analytical methods for ensuring structural integrity, particularly considering the nation's aging infrastructure and the increase in natural disasters which affect infrastructure stability and integrity. The letters stress the Petitioner's research contributing to the field's understanding of effective methods for repairing and monitoring structural damage and how his work on smart materials in novel devices has helped improve the integrity of civil structure under hazardous conditions. In addition, the letters provide specific detailed examples of how the Petitioner's research findings directly impacted their own and others' research with advanced engineering materials. The record shows the Petitioner's research has garnered recognition through its frequent citation by independent, reputable national and international researchers, and that the rate at which his work has been cited is high relative to others in the field of structural engineering. Moreover, evidence shows the Petitioner's research was supported by a grant awarded to [redacted] from the National Science Foundation.

In considering the totality of the evidence, the Petitioner has demonstrated that his education, experience, and accomplishments in his structural engineering field; the significance of his role and background in conducting his research; and his current employment as a teacher and researcher are relevant, probative, and material proof of being well-positioned to advance the proposed endeavor. As we stated in Dhanasar, "endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." Id. at 892. We must consider the totality of the circumstances and whether the record as a whole demonstrates that the Petitioner is well positioned to advance the proposed endeavor. See generally 6 USC1S Policy Manual, F.5(D)(1), https://www.uscis.gov/policymanual. Considering the totality of this evidence and its support of the nonexclusive second prong factors provided in Dhanasar, we conclude that the Petitioner has established by a preponderance of the evidence that he is well-positioned to advance his proposed endeavor.

Accordingly, we withdraw the Director's determination as to the second prong of the Dhanasar framework and conclude that the Petitioner has satisfied this requirement.

[3] For purposes of assessment under the second prong, USCIS considers an advanced degree in the fields of science, technology, engineering, and mathematics (STEM), which is tied to the proposed endeavor and related to work furthering a STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence. See generally 6 USC1S Policy Manual, F.5(D)(2), https://www.uscis.gov/policymanual.

B. Whether on Balance a Waiver is Beneficial

The third prong requires a 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.[4] In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. Matter of Dhanasar, 26 I&N Dec. at 890-91.

The Director determined that the Petitioner had not satisfied the third prong of the Dhanasar framework. Upon de novo review, we conclude that the waiver of the labor certification requirement for the Petitioner would, on balance, be beneficial to the United States.

USCIS considers the following combination of facts contained in the record to be strong positive factors: possession of two advanced STEM degrees in his field of endeavor; his published research and peer review of his work; his knowledge and skills in his proposed endeavor; a plan with progress to further his proposed STEM endeavor; and the interest and support of national academic members in his field. The Petitioner possesses considerable education, experience, and expertise in the analysis of structural systems to continue his research study in resilient systems and computational mechanics with an aim to develop structural systems and design strategies which enhance the performance and safety of structures. He has also demonstrated the significance of his proposed work to advance improving the disaster-resistant design of structures and improving the repair and retrofitting of deficient and aging civil infrastructure to ensure their post-disaster functionality. Based on the foregoing, the Petitioner has established he offers contributions of such value that, on balance, he would benefit the United States even if other qualified U.S. workers are available. The Petitioner, therefore, meets the third prong of the Dhanasar framework. Accordingly, we hereby withdraw the Director's decision otherwise.

III. CONCLUSION

The Petitioner has demonstrated his eligibility for the underlying EB-2 classification and has met the requisite three prongs set forth in the Dhanasar analytical framework. We conclude that he has established eligibility for, and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.

[4] When evaluating the third prong and whether the United States may benefit from the individual's entry, regardless of whether other U.S. workers are available, USCIS considers the following combination of facts contained in the record to be a strong positive factor: possession of an advanced STEM degree, engagement in work furthering a STEM area important to U.S. competitiveness, and that the individual is well-positioned to advance the proposed STEM endeavor of national importance. See USCIS Policy Manual, supra, at F.5(D)(2).