U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31661877

Date: JULY 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a qualitative researcher in the education field, seeks classification as an advanced degree professional. 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. 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 the record did not establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal pursuant to 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 immigrant classification, as either a member of the professions holding an advanced degree 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 as either an advanced degree professional or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Petitioner's proposed endeavor is to "conduct qualitative research on trauma and its impact on students' academic performance and behavior in order to elucidate the underlying associations and develop novel and unique strategies for improving student performance." The Petitioner states that through this research, he will improve the security, well-being, and mental health of American children, allow students to feel safer in their learning environment, and make vulnerabilities in the school environment easier to detect and correct.

The Director found that the Petitioner established that he qualifies for the EB-2 classification as an advanced degree professional, based upon the Petitioner's doctor of education degree. Regarding the Petitioner's request for a national interest waiver, the Director found that the Petitioner demonstrated the first *Dhanasar* prong—the substantial merit and national importance of the proposed endeavor—but did not establish the second or third *Dhanasar* prongs—that he is well-positioned to advance the endeavor or that, on balance, waiving the job offer requirement would benefit the United States.[2] On appeal, the Petitioner asserts that he has demonstrated his eligibility under the second and third *Dhanasar* prongs. Because, as we discuss below, we conclude that the Petitioner has not demonstrated that he is well-positioned to advance the proposed endeavor we need not reach the question of whether the Petitioner has established the first or third *Dhanasar* prongs and we reserve our opinion regarding those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

In determining whether a petitioner is well-positioned to advance their proposed endeavor as required by *Dhanasar's* second prong, 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner contends on appeal that the Director, in determining that the Petitioner did not establish that he is well-positioned to advance the endeavor, did not fully examine the evidence in the record

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

[2] The Director's decision contains a contradictory statement on this point. The decision contains both a statement that the Petitioner established the first prong but not the second prong, and a statement that the Petitioner established the second prong but not the national importance element of the first prong. Despite these contradicting summary statements, the Director's overall analysis is clear that the Director found that the record establishes the first prong, including national importance, but does not establish the second prong.

and did not consider the relevant factors under *Dhanasar's* second prong. For example, the Petitioner notes that the decision does not analyze whether the Petitioner has a "model or plan for future activities," and does not discuss the Petitioner's personal statement and proposed endeavor statements. The Petitioner also asserts, among other things, that the Director placed too much emphasis on the Petitioner's citation record, imposed "novel legal standards," and improperly relied on our prior, now vacated, decision in *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998).

We acknowledge that the Director's decision does not directly discuss every piece of evidence the Petitioner submitted and is brief in its analysis of the second *Dhanasar* prong. However, following review, we conclude that the decision is sufficient and specific enough to provide the Petitioner a fair opportunity to contest the decision and the AAO an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Moreover, we have conducted a de novo review and considered the evidence in the record in full. While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one.

Turning to the factors enumerated in *Matter of Dhanasar* for evaluating evidence under the second prong, we first conclude that the evidence related to the Petitioner's education, skills, knowledge, and record of success in related or similar efforts does not weigh in favor of being well-positioned to advance the proposed endeavor. Although the Petitioner does have relevant education, including a doctorate in education, the record does not otherwise demonstrate that he has the skills and knowledge that would position him well to advance the proposed endeavor. For example, the Petitioner's curriculum vitae and work experience letter show that his experience is primarily as a teacher, lecturer, and course facilitator, with duties that include preparing training materials, delivering trainings, and administering courses. While this experience is in the education field, the record shows that the Petitioner has little experience as an academic researcher, and therefore does not demonstrate that he has developed the skills and knowledge necessary to be well-positioned to conduct qualitative research regarding the impact of mental health on student behavior and academic performance. Similarly, the evidence does not demonstrate a record of success in similar or related efforts. Specifically, the Petitioner submitted evidence of his publications and citation record that shows that he has published only five works and been cited only one time. Three of the Petitioner's works were published in a single year in a single academic journal, and the Petitioner provided no information about the prestige or impact of this journal in the field. Additionally, one of the publications does not appear to be related to the education field but to the field of performance management in human resources. Regarding the single citation that the Petitioner's work has received, the record does not show the context in which this citation was received, such as whether it was a self-citation. We conclude that the lack of a significant citation record, or other evidence of influential or successful work in the field, weighs against finding that the Petitioner has a record of success in related or similar efforts.

We also conclude that the next factors applicable to the second prong of the *Dhanasar* framework—a model or plan for future activities and progress towards achieving the proposed endeavor—do not weigh in favor of the Petitioner being well-positioned to advance the endeavor. The Petitioner contends that his personal statement and proposed endeavor statement demonstrate these factors. The Petitioner's proposed endeavor statement describes the area of research he is interested in pursuing, his goal to be a

"change agent" to improve school environments, and that he intends to publish and present his research. Upon review of the Petitioner's statements, however, we conclude that they do not provide sufficient details, plans, or progress to be credible and persuasive regarding the Petitioner being well-positioned to advance the proposed endeavor. For example, the Petitioner does not discuss funding of his research, any specific research projects which he is currently pursuing or conducting, or any other specific indications or details regarding his progress in the endeavor. By contrast, the petitioner in *Matter of Dhanasar* was working as a postdoctoral research associate at a university, was already performing research and development related to his proposed endeavor at this university, and intended to continue to do so. *See Matter of Dhanasar*, 26 I&N Dec. at 891. We conclude that the Petitioner's general statements and lack of specifics weigh against demonstrating a model or plan for future activities and demonstrating progress toward the proposed endeavor, and that these factors therefore weigh against a finding that the Petitioner is well-positioned to advance the proposed endeavor.

The final factor enumerated in *Matter of Dhanasar* relates to the interest of potential customers, users, investors, or other relevant entities or individuals. Here, we similarly conclude that the evidence in the record does not weigh in favor of demonstrating that the Petitioner is well-positioned to advance the endeavor. The Petitioner emphasizes on appeal the letters of recommendation in the record and the letter of interest from a potential employer as evidence in support of this factor. However, we conclude that this evidence does not sufficiently demonstrate interest from potential customers, users, or other relevant entities. The letters of recommendation generally do not discuss the Petitioner's specific proposed endeavor, how he is well-positioned to advance it, or the writers' interest in the Petitioner's research. For example, one letter of recommendation, which is from a member of the Petitioner's dissertation committee, states that the Petitioner is "conscientious and diligent" and "did good work in a timely fashion." Although the letter contains the generic statement that the Petitioner "has the academic preparation and personal qualities that bode well" for his success in "new research projects," the letter writer does not describe interest in the Petitioner's proposed endeavor or interest in the Petitioner pursuing the endeavor. The Petitioner also submitted a job offer letter from a professor at [redacted] NJ. The writer of this letter speaks highly of the Petitioner and states the intent to offer the Petitioner a teaching and research position at the college. However, the letter is not sufficient to demonstrate the level of interest, as contemplated by *Matter of Dhanasar*, that would support a finding of being well-positioned to advance the proposed endeavor. For instance, the record does not contain evidence of research funding, grants, or other investments in the Petitioner pursuing the proposed endeavor. In *Dhanasar*, we concluded that there was interest from relevant entities in part because the petitioner had received consistent government funding of research projects in which he played a significant role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. *Id.* at 893, Fn. 11. The evidence in the record does not include any similar evidence of funding, from government or non-government sources, that would reflect interest in the Petitioner's work.

Not every individual who has relevant education, who has completed a dissertation in the field, and who has conducted some original research will be found to be well-positioned to advance their proposed endeavor. Rather, we must examine the factors set forth in *Matter of Dhanasar* to determine whether, for instance, the individual's education, skills, and record of success, their model or plan for future activities, their progress towards achieving the proposed endeavor, and the generation of interest among relevant parties supports such a finding. *Id.* at 890. In considering the record in totality—including that the Petitioner has not demonstrated a significant publication history, has not provided evidence of influential

research in the field, and has not submitted evidence of previous funding for his research—we conclude that the Petitioner has not established that he is well-positioned to advance the proposed endeavor.

Because the Petitioner has not demonstrated that he is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, we need not address whether the Petitioner has established the first or third prong of the *Dhanasar* framework. We acknowledge the Petitioner's arguments on appeal as to the third prong but, having found that the evidence does not establish that the Petitioner is well-positioned to advance the proposed endeavor, we will not address those arguments here. *See INS v. Bagamasbad*, 429 U.S. at 25 (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.