U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31282370

Date: JUNE 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a teaching assistant and researcher in instructional design and technology, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner qualified for the underlying classification as a member of the professions holding an advanced degree, but she 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 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 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. We agree. 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 Director concluded that the Petitioner's endeavor has substantial merit but not national importance. The Director further concluded that the Petitioner did not establish that she is well positioned to advance the proposed endeavor, or that, on balance, a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

A. Proposed Endeavor

The Petitioner earned a master of science degree in instructional design, development, and evaluation from [redacted] in 2019 and at the time of filing, she was working as a teaching assistant at [redacted] The Director's decision described the Petitioner's proposed endeavor as "a Researcher in the field of Instructional Design and Technology." The Petitioner contends on appeal that the Director mischaracterized her proposed endeavor.

The Petitioner initially stated in her personal statement dated June 9, 2023, that "[u]pon completion of my degree, I intend to pursue a position as an assistant professor of instructional design and technology at the [redacted] in the United States" and "[m]y planned research topics include further exploration of AR/VR (augmented reality/virtual reality) in educational settings and the application and validation of the Learning Resources Rubric."

In her response to the Director's request for evidence (RFE), the Petitioner similarly indicated that her proposed endeavor is to "continue her research on the development and implementation of innovative theory-based tools designed to evaluate and enhance the quality of learning resources" and "my work will focus on the integration of virtual and augmented reality technologies [in] educational settings." The Petitioner also explained that as her fellowship position at [redacted] is temporary, she is exploring "an assistant professor position" at [redacted] "recent openings within the program at the [redacted] and "a new invitation that I have received to visit the campus at the [redacted]

We acknowledge that the Director did not elaborate on or discuss the Petitioner's proposed endeavor in detail as described in her statements and letters, but we conclude that the Director's decision did not mischaracterize the proposed endeavor such that it rises to "a clear abuse of discretion" as the

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in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Petitioner contends. Based on the descriptions provided in both the initial filing and RFE response, the Petitioner is in the field of instructional design and technology and proposes to research the effects of technologies in an educational setting. Even if we were to determine that the Director mischaracterized the Petitioner's proposed endeavor, based on our de novo review of the record, we conclude that the Petitioner has not demonstrated that her endeavor has national importance or that she is well positioned to advance her endeavor, as discussed below.

B. National Importance of the Endeavor

The Petitioner contends that the Director ignored the evidence submitted with her RFE response and did not consider that "a proposed endeavor can have national importance because it has national or global implications within a field, 'such as those resulting from certain improved manufacturing processes or medical advances,' citing to *Dhanasar,* 26 I&N Dec. at 889. We agree with the Petitioner that the Director evaluated the endeavor only in terms of substantial economic impacts, as the decision concludes: "there is no significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." However, in reviewing the totality of the evidence, we conclude that the Petitioner did not establish her endeavor has broad implications in the field of instructional design and technology, as contemplated by *Dhanasar*.

The Petitioner identified some specific projects that she plans to pursue in her personal statement dated October 4, 2023. First, the Petitioner indicated that she plans to build a web-based system that utilizes a comprehensive Learning Resources Rubric that "will be made available to schools and educational institutions across the United States." Second, the Petitioner discussed her research to "investigate the long-term impacts of using Learning Resources Rubric-guided instructional design on the quality of learning materials" and contribute to "improving educational outcomes nationwide." Her third project "focuses on exploring the potential benefits of integrating Virtual Reality (VR) technology" in teacher education" and "this project stands to benefit the US by contributing to the innovative use of technology in education and improving the readiness of future teachers to integrate technology in their classrooms."

However, the Petitioner did not provide sufficient evidence to corroborate the claims of a broad impact of her projects on the field of education or the use of AR/VR in education. The initial evidence included three journal articles co-authored by the Petitioner in 2020 and 2022 on immersive virtual reality classroom setting and effects on students' learning performance and achievement; her Google Scholar citation record; the 2022 U.S. National Science and Technology Council's updated list of critical and emerging technologies; and various industry reports on the growth of AR/VR in education market. With her RFE response, the Petitioner submitted an updated personal statement, additional citation records, and a recommendation letter that praises her for "securing significant funding" with "detailed, well-articulated research proposals" but does not offer persuasive details on how her innovations and methodologies impact the field of instructional technology overall. Although the Petitioner claims that she provided "a detailed analysis of the national importance" such as the jobs expected to benefit from AR/VR technologies and how "these innovations offer a lifeline by minimizing training time and resource usage," the supporting documents generally discuss the industry and do not specifically mention the Petitioner's endeavor as having a broad impact on the field.

In determining national importance, the relevant question is not the importance of the field, industry, or professional in which the individual will work; instead, the focus is on the "the specific endeavor that the foreign national proposes to undertake" and the endeavor's "potential prospective impact." *Id.* The Petitioner claimed that "my contributions in this area will drive technological advancements in education, bringing immersive and engaging learning experiences to students across the United States," but the record does not contain independent and corroborating evidence that focuses on her innovative research or unique technology platforms, or that suggests her methodologies somehow differ from or improve upon those already available and in use in the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Although the record reflects the Petitioner's intention to provide beneficial research to enhance virtual learning, the Petitioner has not offered sufficient information or evidence to establish that the prospective impact of her specific proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of national importance because they would not extend beyond his students to impact the field more broadly. *Id.* at 893. Here, similarly, the Petitioner has not established that her proposed endeavor stands to sufficiently extend beyond her university or her students to impact the field of education at a level commensurate with national importance.

C. Well Positioned to Advance the Endeavor

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether they are 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; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890. Upon de novo review, the Petitioner has not established that she well positioned to advance her endeavor under the *Dhanasar*'s second prong.

The Petitioner contends on appeal that the Director heightened the standards delineated in *Dhanasar* when stating that the Petitioner's work "has served as an impetus for progress in the field" and that "even the petitioner in Dhanasar himself would fail to meet the standard applied in the Decision." Serving as an impetus for progress, though not the exact language from *Dhanasar*, can demonstrate whether the Petitioner meets the second prong, such as having a record of success, showing progress towards achieving the goals of the proposed research, or generating interest among relevant parties in the field. *Id.* Moreover, *Dhanasar*, a precedent decision establishing an analytical framework to examine national interest waiver cases, does not mandate, or even suggest, that a side-by-side comparison of individual petitioners' achievements and endeavors is required.

The Petitioner further contends that the Director ignored the evidence on record showing "a record of success or progress in the area of her endeavor" and did not correctly apply the preponderance of evidence standard. But as discussed below, the Director properly weighed the evidence and applied *Dhanasar*'s standards before concluding overall that the quality of the evidence lacked probative value. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and

credibility) of the evidence. *Matter of Chawathe,* 25 I&N Dec. at 376; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Here, the Petitioner earned a master's degree in 2019 and at the time of filing, she was pursuing a doctoral degree while working as a teaching assistant. While this is sufficient to show her eligibility for the underlying immigrant classification, the Petitioner has not demonstrated that this level of education puts her into a strong position to advance her proposed endeavor.

Similarly, the Petitioner's brief history of publishing the results of her research, including contributions to three journal articles and the translation of a book from Chinese to English, does not show a record of success relating to her proposed endeavor. The Director reviewed the Petitioner's co-authored three journal articles in 2020 and 2022 and samples of partial articles that cited to the Petitioner's work but concluded that although the reviews of the articles discuss the Petitioner's work, "they do not explain the impact or influence that the petitioner's work had on the field." We agree. Based on these excerpts, the authors reference the Petitioner's research as background material for their own findings, but these limited articles do not represent a level of her success in the field. The articles do not distinguish or highlight the Petitioner's work from the other cited papers.

Despite the Petitioner's claim that her citations are notable, we concur with the Director that being published in journals or having a certain number of citations does not sufficiently "prove that the petitioner's research is influential or considered a record of success." The Petitioner has not established that the number of citations received by her published articles reflect a level of interest in her work from relevant parties sufficient to meet *Dhanasar*'s second prong. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record alone. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

The Petitioner initially provided evidence from Google Scholar (GS) reflecting 115 citations, with her first article in 2020 receiving 99 citations and her other two articles in 2022 receiving 15 and 1 citations, respectively. The Petitioner, however, did not specify how many citations were self-citations by her or her co-authors. Furthermore, the Petitioner submitted data from Clarivate Analytics (CA) regarding baseline citation rates and percentiles by year of publication for the computer science field and claimed that her citations from articles published in 2020 ranked among the top 1% and citations from articles in 2022 ranked in the top 10%. However, the Petitioner did not indicate whether she factored in any self-citations in determining these percentile rankings. Moreover, the documentation from CA 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."

In response to the Director's RFE, the Petitioner submitted data claiming to be derived from "OpenAlex" reflecting 99.92% for "Citation Percentile" and 99.76% for "Publication Percentile," in addition to providing updated GS figures reflecting 131 total citations. Notwithstanding the fact that

the evidence does not indicate the source as "OpenAlex," the Petitioner did not show how "OpenAlex" calculates the percentile figures and how these represent independent citations.

The record contains one recommendation letter referencing the Petitioner's graduate research. The letter discusses the Petitioner's research projects and her "crucial role" in drafting research proposals and securing research funding; however, in regard to the implementation or impact of her work, the author does not further elaborate and sufficiently explain how the Petitioner's work has been utilized in the field or otherwise constitutes a record or success beyond having been cited by others in their published works. Moreover, the lack of specificity in the letter do not show how her work has affected the field or industry demonstrating a history of accomplishment, well positioning herself to advance her proposed endeavor or that there are potential interests from funders.[2]

As it relates to her peer review activity, the Petitioner provided documentation evidencing her review of manuscripts for journals and conferences. The Petitioner, however, did not explain the significance of her review experience or demonstrate that her participation in the widespread peer review process represents a record of success in her field or it is otherwise an indication that she is well positioned to advance her endeavor.

The record demonstrates that the Petitioner has conducted and published research during her graduate studies and we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit. But not every individual who has performed original research will be found to be well positioned to advance her proposed endeavor. Although the Petitioner claims that the Director improperly discounted her accomplishments, she has not presented sufficient evidence to establish that she is well positioned to advance the proposed endeavor.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prong of the *Dhanasar* analytical framework, she has not established eligibility for a national interest waiver as a matter of discretion. Thus, we decline to reach and hereby reserve the appellate arguments regarding the remaining issue under the third prong of *Dhanasar*.[3]

ORDER: The appeal is dismissed.

[2] The record contains a notice of approval from the National Science Foundation of China (NSFC) grant program, but the notice elaborates on how to submit a proposal and does not show that the Petitioner was actually awarded the grant.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).