U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-W-K

DATE: JUNE 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an industrial hygiene researcher, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding 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. In March 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*.

In support of his appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver under the new framework. Specifically, he notes his research examining the role of silica in industrial health, as well as his role as a mentor with a high school science specialty program.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is 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.

The third prong requires the 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. In

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[2]

II. ANALYSIS

The Petitioner obtained a Ph.D. in environmental health sciences in 2010 from [redacted] Accordingly, the Director determined that the Petitioner qualified for classification as a member of the professions holding an advanced degree. The sole 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

In the initial filing, the Petitioner indicated that he is employed by [redacted] and he aims to continue research relating to "the anticipation, recognition, control, and prevention of the causes of silicosis" a disease described as "the most common occupational lung disease caused by inhalation of respirable crystalline silica (RCS)." The Petitioner explains that silicosis is the fibrotic pneumoconiosis that is caused by the inhalation of fine particles of crystalline silicon dioxide, and that exposure to large amounts of free silica can pass unnoticed because it is an odorless nonirritant that has no immediate noticeable effect. He describes how he aims to help protect the American worker from developing silicosis by improving the occupational health standards from silica exposure and continuing to expand his research applying [redacted] techniques to [redacted] sampling to influence worker safety policies.

We find that the Petitioner's proposed research, which aims to improve the industry safety standards of workers exposed to harmful materials, has substantial merit. The Petitioner provided letters from colleagues and professors discussing the critical need to develop methods to discern and combat cumulative exposure to environmental contaminants, particularly silica. The letters describe the importance of developing industrial hygiene detection and disposal methods and affirm that the Petitioner's proposed work stands to assist industries in controlling worker exposure to harmful irritants, and discussing the formidable health and financial costs of silica exposure to the industrial worker. For example, [redacted] associate service fellow at the [redacted], notes that the proposed research "will

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

offer protection against the deadly silicosis and will no doubt benefit the U.S. workers by saving countless lives."

In addition to his research activity, the Petitioner claims that he will continue his mentorship of students in the Emerging Scholars Program, Environmental Health Sciences Academy at [redacted] and that his work with these high school students also has substantial merit and national importance. The Petitioner provides a brochure describing the Emerging Scholars Program as an opportunity for high school students to "work alongside faculty in environmental health sciences to conduct environmental health research relevant to the community." Dr. [redacted] the faculty lead for the program and associate professor at [redacted] describes how the Petitioner is responsible for mentoring students and helping students appreciate industrial hygiene practices. Program literature describes the Petitioner as a "mentor/research scientist," working with students to research issues such as [redacted] analysis, silicosis, and air sampling. We find this proposed mentorship has substantial merit, as it provides valuable educational benefits to students involved in the program.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of his work. In his response, the Petitioner provides a more detailed explanation of his mentorship of high school students in the Emerging Scholars Program. The record, however, does not establish that his mentorship and instruction would impact environmental health education more broadly, as opposed to being limited to the students at the institution where he serves. Accordingly, without sufficient documentary evidence of their broader impact, the aforementioned teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.[3]

Nonetheless, to the extent that the Petitioner proposes to conduct occupational hygiene research, we find the evidence sufficient to demonstrate that such research is of national importance. The record includes evidence that 2.3 million workers are exposed to respirable crystalline silica in their work places, including 2 million construction workers who drill, cut, or grind silica-containing materials such as concrete and stone. The Petitioner also states that, from 1968 until 2002, silicosis was recorded as the underlying or contributing cause of death for approximately 74 million workers in the United States. In addition, the Petitioner has offered documentation indicating that the proposed benefit of his industrial hygiene research has broader implications for the field, as the results are disseminated to others through education journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he meets the first prong of the *Dhanasar* framework.

[3] Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

B. Well Positioned to Advance the Proposed Endeavor[4]

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner previously provided evidence of his published work, professional memberships, and academic credentials. In response to our RFE, the Petitioner additionally submits his CV and an updated report from [redacted] As discussed below, we find the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, rising to the level of rendering him well positioned to advance his proposed research endeavor of developing industrial hygiene solutions to harmful particulates. *See Dhanasar*, 26 I&N Dec. at 890.

As evidence that he meets this prong, the Petitioner points to his participation in two research studies: '[redacted]' and "[redacted]" and he provides a copy of each study's protocol. Both protocols list the Petitioner as one of six research scientists and state that his duties are to "assist Dr. [redacted] in assessing and assigning exposures to respirable crystalline silica for the study cohort." While the record includes letters of recommendation emphasizing the importance of the Petitioner's role in these studies, these statements are not supported by the information in the protocols. Beyond assisting Dr. [redacted], the Petitioner's role in spearheading or developing the study or in furthering the research has not been sufficiently explained. Also, many of the statements refer to the potential future benefits of the Petitioner's work, yet they do not address how his role in either of these research projects represents a record of success in the field of industrial hygiene. For example, Dr. [redacted] a consulting scientist with [redacted] writes that the Petitioner developed a matrix that he used to calculate yearly average and cumulative exposure for the participating industrial [redacted] workers and that his work on the industrial [redacted] workers silicosis study and the [redacted] pneumoconiosis study "could be helpful to improve the occupational health of U.S. workers and the U.S. economy by supporting new or updated OSHA health standards for silica." He does not, however, discuss whether the work has already yielded such results nor does he indicate whether the Petitioner's matrix has been replicated in other studies or has otherwise garnered interest in the field.[5]

Additionally, the Petitioner maintains that his work in the above studies has assisted in the [redacted] development of a final rule protecting workers from exposure to respirable crystalline silica. While he submits a copy of the final rule, he does not document his role in its development and the report does not reference the Petitioner, nor does it

[4] As the Petitioner's proposed mentorship activities do not satisfy the "national importance" element of the *Dhanasar* framework's first prong, we will limit the remainder of our analysis to his proposed research.

[5] As additional evidence regarding one of the above studies, on appeal, the Petitioner provides a copy of the [redacted]' However, he has not demonstrated how the report reflects a record of success or a level of interest in his work rendering him well positioned to advance the proposed endeavor.

include documentation showing that the aforementioned studies were used in its development. Overall, the Petitioner's participation in these studies does not establish a record of success or progress in the field. The Petitioner has not submitted evidence establishing that this contribution to the projects served as an impetus for progress or generated positive interest among relevant parties in the broader academic community, industry, or government. Furthermore, the Petitioner has not established the significance of his role in either of these studies to the extent that he should be credited with the success of the overall projects or any interest that they generated.

The Petitioner also contends that he played an important role in research evaluating automotive workers' exposure to hazardous materials, and provides a copy of a presentation which he co-authored examining the exposure control matrix in the automotive body industry. The Petitioner notes that this poster was presented at the entitled " but he does not explain his specific role in the research or the significance of the study. Dr. a professor of industrial hygiene at and the Petitioner's supervisor, discussed this research method for assessing surface contamination in automotive body repair shops noting that the Petitioner's work "could help to reduce health risk for painters in automotive body shops." He did not explain whether the Petitioner's research, presented in 2003, has already had such an effect, has garnered interest from relevant parties, or otherwise demonstrates a record of success in the field. Dr. expectation regarding the possible future impact of the Petitioner's work is not evidence of his eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

As another example of his past success, the Petitioner refers to his master's thesis work concerning treatment and treatment in South Korea. He refers to his research published in the which he claims was utilized to stabilize a large municipal treatment plant; however, he does not offer evidence to support his statements.

The record also includes letters of support from the Petitioner's colleagues discussing his work in the area of industrial hygiene and attesting that he has played a role in advancing industrial hygiene and environmental safety practices. For example, professor and vice chair at stated that the Petitioner's work is "important for the determination of causes of various occupational diseases, and that his findings demonstrated that "exposures to microbial contaminants during the restoration of affected area had adverse effects on the restoration workers' health." However, Dr. did not provide specific examples of how the Petitioner's research has impacted occupational disease prevention, treatment protocols, or environmental or industrial processes or otherwise constituted a record of success or progress, or how it has garnered interest in the field. Similarly, , industrial hygienist with attested that the Petitioner's findings "have the potential of influencing future treatment of the problem of silicosis," yet he did not explain the basis for his opinion or offer evidence confirming his statements.

The Petitioner additionally claims that he has demonstrated a record of success through his application of the DRIFTS infrared spectroscopy technique to measure the amount of in in the presence of other particulate contaminates. Several letters describe the Petitioner's work as part of a group that used the DRIFTS technique to measure workers' exposure to potentially harmful wood dust. For example, Dr. , researcher in the exposure management branch of , explained that, in 2005, she worked on a team at responsible for developing a method for determining in the presence of other particulate contaminants. She noted that she became aware of the 2005 article " " co-authored by the Petitioner and published in She indicated that she met with the Petitioner several years later to discuss collaboration on a joint project. This led her team to test and verify the method for determining in a coordinated research endeavor between and the Petitioner's laboratory during which he was responsible for preparing samples. The results of this study were published in two journals: the in 2013 and the in 2015. Dr. did not explain the significance of the Petitioner's role in sample preparation or provide further detail about the importance of the study's findings.[6] Overall, Dr. did not sufficiently explain how the Petitioner's individual role in these joint laboratory projects has generated positive interest in his work among relevant parties or reflects a record of success in his area of research. Finally, Dr. stated that the Petitioner's research, published in 2005, is in "the process of becoming widely recognized," but she did not elaborate on the recognition it is receiving nor does the record include sufficient documentation to support her assertion.

Similarly, a chartered chemist with the and an associate service fellow with the both describe working with the Petitioner on a DRIFTS project measuring However, they do not provide sufficient detail regarding the Petitioner's individual role in the study, or its significance to the field of industrial hygiene, to establish that this experience renders the Petitioner well positioned to advance his proposed endeavor.

Finally, on appeal, the Petitioner contends that he "found a software inconsistency" between two spectrometers which resulted in different conversion equations in DRIFTS studies, and reported it to their manufacturer, He does not explain why this finding is significant or whether it impacted subsequent studies. While the record includes a letter explaining the calibration issue from addressed to the Petitioner's supervisor, Dr. the Petitioner is not mentioned.

While 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, not every individual who has performed original research will be found to be well positioned to advance his or her

[6] The record does not reflect that the journal articles have been frequently cited, nor has the Petitioner provided other evidence demonstrating the success of the research.

proposed research. 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 evidence discussed above is insufficient to demonstrate a record of success or progress or a degree of interest from relevant parties that render the Petitioner well positioned to advance his proposed endeavor. For this reason, the Petitioner has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

Third and finally, we conclude that on balance, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[7] While some of the Petitioner's knowledge and experience may exceed the minimum requirements for his occupation and therefore could not be easily articulated on an application for labor certification, he has not demonstrated, as claimed, that he presents benefits to the United States through his proposed endeavor that outweigh those inherent in the labor certification process.

On appeal, the Petitioner maintains that granting the waiver would serve the national interest because his presence would help to ameliorate a shortage of industrial hygiene professionals. We note, however, that the U.S. Department of Labor addresses worker shortages through the labor certification process and the Petitioner has not demonstrated that obtaining a labor certification would be impractical, nor has he shown an urgent national interest in his research. In addition, the Petitioner has not shown that he offers contributions of such value that, over all, they would benefit the nation even if other qualified U.S. workers were available. In sum, the Petitioner has not established 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. The Petitioner, therefore, has not met the third prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of C-W-K-*, ID# 330051 (AAO June 13, 2017)

[7] The labor certification process is designed to certify that the foreign worker will not displace, nor adversely affect the wages and working conditions of, U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from business necessity.