U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31651308

Date: JUNE 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a materials engineer, 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 Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 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 (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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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. at 889.

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. *See id.* at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner generally described the endeavor as a plan "to conduct materials synthesis and characterization, electrochemical testing and analysis, and mathematical modeling to develop state-of-the-art energy devices and new materials for renewable energy conversion in order to address the global energy crisis." The Petitioner further stated that her research "is relevant to mitigating greenhouse gas emissions and renewable energy conversion and generation." The Petitioner elaborated that, at the time, she was "most interested in pursuing this position with [redacted] which she describes as "a leading provider of distributed energy solutions." The Petitioner summarized her qualifications, prior research she has conducted, and generalized information regarding energy consumption and research. The Petitioner also submitted opinion letters that reiterate the Petitioner's qualifications, prior research she has conducted, and generalized information regarding energy consumption and research.

In response to the Director's request for evidence (RFE), the Petitioner reiterated her qualifications, prior research she has conducted, and generalized information regarding energy consumption and research. She also stated that she "is currently employed as an associate-R&D at [redacted] which she describes as "an independent manufacturer of advanced battery materials using valuable elements reclaimed from spent lithium-ion batteries." The Petitioner summarized the benefits of the battery material recovery process under development at [redacted] The Petitioner submitted an employment confirmation letter from the operations manager at [redacted] that indicates that, after the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, she began working in her current position for [redacted] The Petitioner described her duties as "laboratory activities," although the employment confirmation letter elaborates that the Petitioner has been responsible for "the analysis and organization of test data, management of laboratory equipment, fulfillment of customer sample requests, and development of hydro and electrochemical methods."

The Director acknowledged the employment confirmation letter submitted in response to the RFE, and the summarizations of the Petitioner's qualifications, prior research she has conducted, and

generalized information regarding energy consumption and research. However, the Director noted that the record does not substantiate the generalizations with "quantitative specifics, supported by independent documentation." The Director explained that the record's generalizations, "without more does not provide sufficient context regarding whether the endeavor has the potential to create a significant impact or have broader implications" beyond those potentially resulting from "any basic economic activity." The Director also acknowledged the Petitioner's references to Biden Administration statements regarding science, technology, engineering, and mathematics (STEM) fields. However, the Director explained that "the fact that the [P]etitioner's endeavor falls within a STEM field does not automatically show eligibility for a national interest waiver. Specifically, the STEM endeavor must have both substantial merit and national importance in respect to the first prong of *Dhanasar*." Ultimately, the Director concluded that the record does not establish whether "the [P]etitioner's activities would operate on such a scale as to rise to the level of national importance," as required by the first *Dhanasar* prong. The Director further concluded that the record does not establish that the proposed endeavor has substantial merit, also required by the first *Dhanasar* prong. As a petitioner is ineligible for a national interest waiver if any of the *Dhanasar* prongs are not satisfied, the Director did not address the second or third *Dhanasar* prongs. *See Matter of Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner reiterates prior research she has conducted and generalized information regarding energy consumption and research. Specifically, the Petitioner asserts that "[t]he United States Department of Energy has identified fuel cells as a key technology for reducing greenhouse gas emissions and achieving energy security," she references the estimated value of "the fuel cell market in North America . . . by 2030," environmental goals for the year 2050 and other clean-energy projects, and she notes that "research involving advanced engineering materials [is] an area of research designated by the National Science and Technology Council ('NSTC') as involving 'critical and emerging technologies' and the subject of [the Petitioner's] proposed endeavor." The Petitioner asserts on appeal that the generalized information regarding energy consumption and research establish her proposed endeavor has national importance.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on "the specific endeavor that the [noncitizen] proposes to undertake" and "we consider its potential prospective impact," looking for "broader implications." *See id.* at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or those with "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The generalized information regarding energy consumption and research addresses the importance of the industry, field, or profession in which the Petitioner proposes to work; however, as noted, the importance of the industry, field, or profession in which an individual will work is not the relevant question for determining whether the potential prospective impact of the specific endeavor the Petitioner proposes to undertake may have national importance. *See id.* Neither the Department of Energy's energy security policy, nor the estimated North American fuel cell market in 2030, nor environmental goals for the year 2050, nor the NTSC's critical and emerging technologies

designations, nor any of the other generalized information regarding energy consumption and research the Petitioner references discuss the Petitioner, the specific endeavor she proposes to undertake, and how the specific endeavor may have the type of broader implications indicative of national importance. *See id.* The generalized information does not discuss how the specific endeavor the Petitioner proposes to undertake may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances," or "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," or any other broader implications that may indicate national importance. *See id.* In turn, the Petitioner's references to prior research she has conducted relate to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—but they do not relate to whether the specific endeavor the Petitioner proposes prospectively to undertake may have national importance. *See id.* at 888-91.

We note in particular that the employment confirmation letter the Petitioner submitted in response to the RFE referenced "fulfilment of customer sample requests." The Petitioner's self-described "laboratory activities" appear to benefit whichever company that employs or may employ the Petitioner, and the apparent customers of the Petitioner's employer(s). However, the record does not establish how "the analysis and organization of test data, management of laboratory equipment, fulfillment of customer sample requests, and development of hydro and electrochemical methods," or any other "laboratory activities" the Petitioner may perform, may extend beyond her employer(s) and the particular customers of the employer(s), to have national or even global implications within the field of energy, or any other particular field, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* at 889-90. Even if the record established how the particular research to which the Petitioner proposes to contribute may have the type of "national or even global implications within a particular field," the record does not clarify the significance of the Petitioner's particular "laboratory activities" compared to other workers for the same employer(s) who may have greater responsibility. *See id.* In turn, the record does not establish how the Petitioner, as a single researcher working for—presumably—one employer at a time may demonstrate "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *See id.* We acknowledge that a proposed endeavor may demonstrate national importance without necessarily establishing substantial positive economic effects; however, the record does not otherwise establish how the specific endeavor the Petitioner proposes to undertake may have such non-economic national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *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); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.