U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33363089

Date: MAR. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher and adjunct professor in the field of geomatics engineering, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification as an advanced degree professional, but that he did not establish that he merited a national interest waiver. 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. *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 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.

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

II. NATIONAL INTEREST WAIVER

The Petitioner possesses a doctorate in geomatics engineering. Based on this, the Director determined that the Petitioner is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification. Thus, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner is employed as a director of technology development in position and navigation systems, as well as an adjunct professor in the field of geomatics engineering. He proposes to conduct research on global positioning systems (GPS) interference detection and mitigation as a tenure-track professor in the United States. The Director did not address whether the Petitioner's proposed endeavor had substantial merit or was nationally important. However, the Director concluded that the Petitioner had not established the second and third criteria under the *Dhanasar* analytical framework, namely that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States, and that he therefore had not established eligibility for the national interest waiver. *Id.*

On appeal, the Petitioner acknowledges that the Director did not conclude whether the Petitioner's proposed endeavor had substantial merit or was nationally important under *Dhanasar* prong one. The Petitioner claims the Director therefore conceded that his proposed endeavor had substantial merit and was nationally important. The Petitioner also asserts that he meets the two remaining *Dhanasar* prongs and therefore merits a national interest waiver. For the reasons below, we agree with the Director and conclude that the Petitioner has not satisfied the second prong under the *Dhanasar* analytical framework regarding whether he is well positioned to advance his proposed endeavor.

A. Well Positioned to Advance the Proposed Endeavor

To determine whether a petitioner is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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 record includes the Petitioner's curriculum vitae and academic records; several of his publications and related citation records; documents related to his patents and patent applications; and evidence the Petitioner has conducted peer review activities. In addition, the Petitioner offered letters from experts in the Petitioner's field describing his experience in performing research and other accomplishments, as well as the importance of GPS technology. The Petitioner also submitted evidence of his plans for long-term employment in the United States including three responses to applications he submitted for university professor positions. He claimed in a personal statement that he is certain of his ability to find suitable research positions within his field in the United States. On appeal, the Petitioner provides a Google Scholar profile for the petitioner in *Dhanasar*, a professor, and a February 2022 list of critical and emerging technologies issued by the National Science and Technology Counsel (NTSC).

We acknowledge the Petitioner's education, including his doctorate degree in geomatics engineering. Although the Petitioner's advanced degree in a STEM field is an especially positive factor, it is not a sufficient basis to determine that he is well positioned to advance the proposed endeavor. *See 6 USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual. Rather, we look to a variety of factors and education is merely one among many that may contribute to such a determination.

The Petitioner also relies, in part, on his citation record, including 22 publications that he asserts have enough citations to be "among the most highly cited in the field of Engineering for their years of publication." The percentiles claimed by the Petitioner come from Clarivate Analytics which provides baseline citation rates and percentiles by year of publication for different research fields. Clarivate Analytics cautions, however, that its "[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." Furthermore, the citation information concerns the larger field of "engineering" and compares his citation frequency in geomatics engineering to that of the larger field. While geomatics engineering is part of the field of engineering, the Petitioner does not submit sufficient evidence confirming that information extrapolated from the larger field applies equally to each subfield within engineering, including geomatics engineering. Moreover, citation frequency, which may include self-citations, is quantitative in nature and does not reveal the reasons for the citations, which involve a qualitative analysis.

Here, while the Petitioner submits letters of recommendation from individuals in his field, they only generally describe his research and other accomplishments and the importance of GPS technology and provide limited information or examples of how his research and work has been implemented, utilized in, or influenced his field or otherwise constitutes a record of success or progress in the field. We also acknowledge evidence that the Petitioner has co-authored four patents and applied for three others, as well as his peer review activity. The Petitioner has not, however, provided evidence demonstrating the significance of the patents to the geomatics engineering field. With regard to his peer review activity, the Petitioner provided printouts and emails showing he has reviewed articles between 2014 and 2020. But the Petitioner has not established the significance of his review experience nor does the record show that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor as a tenure-track professor in the United States. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

We also note the record does not include sufficient evidence regarding the Petitioner's model or plan for future activities; the progress he has made towards achieving his proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals, to satisfy the second *Dhanasar* prong. *See id.* In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants," reflecting the "the significance of the petitioner's research in his field" as corroborated by evidence of peer interest and consistent government funding of his research projects. *Id.* at 893 n.11. The Petitioner, however, does not offer evidence showing that he has been the recipient of any scientific research grants or other source of funding for past or future projects that would enable him to continue his research in the United States and show that he is well positioned to continue research in his field.

Similarly, the Petitioner emphasized with his Form I-140 and on appeal, that his specific endeavor is not just to continue his research in the field of geomatics engineering but doing so as a tenure-track professor in the United States. In support of his petition, the Petitioner submitted what appear to be automated responses to his employment applications for three professor positions in the United States. Each application for the professor positions was submitted on the same day in November 2020 and each response generally states that the submitted application would be reviewed and that the Petitioner may be contacted in the future. The record does not contain evidence of any job offer made to the Petitioner or any further communications with the universities, nor does the record otherwise show interest from entities in the United States that would allow the Petitioner to continue his research as a tenure-track professor as proposed. For instance, while the Petitioner submitted several letters of recommendation praising his past work, the letters do not specifically address his plans to become a tenure-track professor in the United States or describe how he will continue his research in the United States.

Thus, although the record indicates that the Petitioner conducted and published research, he has not shown that this work renders him well positioned to advance his proposed research as a tenure-track professor. 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 their proposed endeavor. Rather, we must 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. When considering the entire record, including the Petitioner's education, skills, knowledge and experience, he has not sufficiently shown a record of success in related or similar efforts, progress towards achieving his proposed endeavor; and interest from relevant entities or individuals. Accordingly, the record is insufficient to establish he is well positioned to advance his proposed endeavor.

III. CONCLUSION

The Petitioner has not established that he satisfies the second prong of the *Dhanasar* analytical framework and is therefore has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. As noted above, the Director did not address whether the Petitioner's proposed endeavor had substantial merit or was nationally important, but concluded that the Petitioner did not 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, as is required under prongs one and three of the *Dhanasar* analytical framework. While the Petitioner also asserts that he satisfies both these prongs on appeal, since our determination that the Petitioner did not establish that he is well positioned to advance his proposed endeavor is dispositive of his appeal, we decline to reach and hereby reserve the appellate argument on those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach")

ORDER: The appeal is dismissed.