U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29885703

Date: MAR. 5, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is bioengineering technology researcher who 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 Nebraska Service Center determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree, the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that her endeavor has national importance,[1] (2) did not demonstrate that she is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. The matter is now before us on appeal. 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 disagree with the Director's determination that the endeavor was not shown to have national importance. The Petitioner states that her endeavor is to conduct research in the field of airborne pathogen transmission which will aid in the development of non-pharmaceutical interventions that will disinfect indoor environments and minimize transmission of airborne illnesses. The Petitioner provided documentation showing that her proposed research has broader implications for public health and the engineering field, as the results would be widely disseminated through scientific journals and conferences. Accordingly, we conclude that the Petitioner has demonstrated that her proposed endeavor has national importance, and we will therefore withdraw the Director's adverse conclusion regarding this element of the first prong of the *Dhanasar* framework.

Notwithstanding the favorable determination discussed above, we will dismiss the appeal because we agree with the Director's conclusion that the Petitioner did not establish that she is well-positioned to

[1] The Director determined that the Petitioner's endeavor was shown to have substantial merit.

advance her proposed endeavor. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the remaining *Dhanasar* third prong. *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"); *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).

In discussing whether the Petitioner is well-positioned to advance her endeavor, the Director acknowledged the Petitioner's three scholarly publications – one of which pertained to the field of electrochemistry – but found that the record does not show that her research has been frequently cited by independent scientists, has affected her field of endeavor, or that it has generated substantial positive discourse in the chemical engineering community. The Director noted that the comparative ranking of a paper's citation rate does not automatically demonstrate a record of success in the field and also pointed out that original research does not necessarily deem someone as well-positioned to advance their proposed research. The Director also mentioned several letters of recommendation that discussed the Petitioner's research and contributions to specific projects, but concluded that the record lacks sufficient evidence showing that the Petitioner's research has been widely accepted, implemented, or regarded as authoritative within the field of her proposed endeavor, or that the research has impacted or influenced that field, thereby demonstrating a record of success or progress in advancing her field of endeavor.

On appeal, the Petitioner restates prior arguments and refers to evidence that had been previously submitted and considered in issuing the denial. For instance, the Petitioner points to previously submitted evidence concerning her credentials and funding. On the issue of funding, we note that 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." 26 I&N Dec. at 893, n.11. Here, the Petitioner points to a previously submitted recommendation letter from [redacted] her faculty advisor in the doctoral program she is attending, who stated that the Petitioner assumed "a critical role" in a collaborative project between the university and [redacted] Inc. However, the record does not show that the Petitioner was mainly responsible for obtaining funding for that project; nor does the record show that the Petitioner was mainly responsible for obtaining funding in other projects associated with prior research that she conducted during her undergraduate studies. We further note that the statement of work for the collaborative research project at [redacted] shows that [redacted] made a three-year commitment to fund "research in the field of indoor air quality" for which it required the University to put together a "core team" that would include at "minimum two Ph.D students, one Post Doctorate/Research Associate, and 3 faculty members." However, the statement does not mention the Petitioner by name or otherwise indicate that the Petitioner's participation was a condition for the collaboration or funding of the project. And while the Petitioner claims to have received funding from "prominent sources such as the U.S. National Institute of Health (NIH)," the record is unclear as to the amount of the NIH's funding, which appears to have been allocated for research that is unrelated to the Petitioner's proposed endeavor; nor has the Petitioner specifically identified other "prominent sources" of funding.

The Petitioner also highlights the novelty and evolving nature of her current research, stating that pre-existing publications in this field "will attract more citations" as compared to the three citations resulting from her prior research in the field of electrochemistry. However, the Petitioner must

establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). Thus, while the Petitioner anticipates that her prior articles will generate more interest in the future, we must review the evidence that is before us, which does not currently show that the Petitioner's research has been widely accepted or implemented in the field of airborne pathogen transmission. Likewise, the Petitioner's present level of education, research, and publication does not currently support the claim that she is well-positioned to advance her endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. Here, the record shows that at the time of filing the Petitioner was a fourth-year doctoral candidate whose publications were primarily in the field of electrochemistry for research she had conducted during her undergraduate studies.

In determining whether the Petitioner is well positioned to advance her endeavor, 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 support such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in the field of airborne pathogen transmission or that it has generated substantial positive discourse in evaluating air cleaning technologies. Nor does the evidence show that the Petitioner's research findings have been frequently cited by independent researchers or that they otherwise constitute a record of success or progress in advancing research relating to airborne pathogen transmission.

In sum, the Petitioner has not established that the previously submitted evidence demonstrates that she is well positioned to advance her proposed research endeavor at this time. Therefore, the Petitioner has not established that she satisfies the second prong of the *Dhanasar* framework.

Accordingly, we adopt and affirm the Director's analysis and decision regarding the second prong of Dhanasar, whether the Petitioner is well positioned to advance the endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). As noted above, we withdraw the Director's determination on the first prong and find that the Petitioner has established the national importance of the endeavor, and we reserve the Petitioner's appellate arguments regarding the third *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.