U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29241487

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher of [redacted] choir conductor, and music instructor seeks second preference immigrant classification, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 will sustain 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 for the underlying EB-2 classification, 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, 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

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72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The record supports that conclusion. 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 Petitioner is a choir instructor, music performer, and researcher of [redacted] who proposes to continue her research, documentation, and preservation of [redacted] Her research would focus on developing a guide to speak and perform the Assyrian and Syriac languages in order to provide a scholarly understanding of the rarely studied music, culture, and ethnic history of the Assyrian community. For the first prong of the Dhanasar framework, the Director determined that the Petitioner's proposed endeavor to conduct research on [redacted] has substantial merit and is of national importance. Upon review of the record, we agree that the Petitioner has established that she meets the first prong of the Dhanasar framework.

A. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to 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 Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner meets *Dhanasar's* second prong. Upon de novo review, we conclude that the record does establish by a preponderance of the evidence that the Petitioner is well positioned to advance her proposed endeavor.

The record includes the following: the Petitioner's curriculum vitae; academic records and achievements; recommendation letters from her colleagues, former professors, and Assyrian community leaders; correspondence relating to her future proposed research work and its funding; documentation relating to her choir conducting and conference speaker presentations; published journal papers; citation records and peer review for her journal papers; and her Ph.D. dissertation research paper.

[2] The record shows that the Petitioner received a degree of doctor in musical arts from [redacted] in 2021.

The Petitioner completed both a master of music education and a doctor of musical arts at The [redacted]. For her doctorate degree, she was awarded the [redacted] for her research work with historical [redacted] The record shows that the Petitioner grew up in [redacted] Iraq and later worked as a music instructor and an assistant dean at the [redacted] having previously received a bachelor's degree from the university in 2008. She is trained in both Western and Middle Eastern music, with a specialty in Ancient and Assyrian Church of the East.

Multiple letters from international and national scholars emphasize the significance of [redacted] to the cultural heritage of the Assyrian communities in the United States. Articles explain that the Assyrian community adheres to the Syriac Christian faith, which has encountered challenges in studying its history due to lack of resources from the destruction of libraries and private collections. Since many Assyrians have been displaced from their home countries of Iraq and in the Middle East, the letters explain that it is rare to find scholars in the United States who are knowledgeable of and willing to research and preserve [redacted]

Several scholars and Assyrian community leaders who have a history of interest in the Petitioner's work explain in meaningful detail that the Petitioner is a rare scholar who is well versed in theoretical aspects of her field and who has extensive experience in Middle Eastern choirs in multiple faiths, languages, and subcultures. For instance, a professor of modern Middle Eastern history at [redacted] in Ohio points out that the [redacted] are an ancient type of music largely unknown to academics in the United States due to the lack of published resources and experts in Assyrian music. He states, "The absence of certain communities from scholarly discussion is largely a function of their omission from national archives and libraries, but also reflects a lack of training among scholars in the ancient and modern languages used by such communities. [The Petitioner] is a unique exception to this troubling trend . . . [L]ess than a handful of [p]rofessors specialize in Syriac language, and it is extremely challenging to find specialists in Assyrian music who are also familiar with the community's language and culture."

Additional recommendation letters also emphasize the Petitioner's unique knowledge and background making her well positioned to advance her proposed endeavor. A senior research associate at the [redacted] points out, "I am not aware of any scholar apart from [the Petitioner] who possesses this ability in the East Syriac rite." Another letter from the founder and executive director of the [redacted] who has worked with the Petitioner explains that she is the only known "formally trained [redacted] who earned her doctorate degree in [redacted] The letter further explains, "[T]he Petitioner's expertise in [redacted] music and her ability to teach and lead based on her research knowledge . . . is very much needed in order for these [redacted] which are considered great antiquity, to be preserved and transferred to the next generation."

A letter from a professor at [redacted] in Spain describes assisting the Petitioner with her dissertation research stating that it is a "unique source that provides valuable information of the history of the composers, the language, and the music analysis of [redacted] Her significant work is accessible and beneficial to all scholars." The letter further describes the rarity and value of her work by detailing that the Petitioner's work focused on [redacted] of the Church of the East that are "written Assyrian-Syriac, a dialect of Aramaic" and compared [redacted] in different manuscripts where "she provided English translations as well as their melodies." The

professor explains that following the Petitioner's graduation, the professor subsequently invited her to present her research work to an international research community focused on Assyrian language, history, and culture. Although the Petitioner's work has a limited citation history, evidence shows that she has been invited to and has presented her work at additional international scholar conferences focused on Assyrian culture, including conferences at [redacted], the [redacted], and the [redacted]

In addition, the Petitioner has presented a plan for continuing her research. The Petitioner plans to be a postdoctoral fellow researcher at the [redacted] at the [redacted] School at [redacted] in Massachusetts. Advancement of her plans through the formal acceptance of her visiting scholar application and financial assistance from [redacted] and an Assyrian community organization shows the academic interest and advancement of her initially indicated plans.

The record demonstrates that the Petitioner's education, her experience and accomplishments in her Assyrian music field, the significance of her role and unique background in conducting her research, and the interest and funding from university and community entities are relevant, probative, and material proof of being well positioned to advance the proposed endeavor. Considering the totality of this evidence and its support of the nonexclusive second prong factors provided in Dhanasar, we conclude that the Petitioner is well positioned to advance her proposed endeavor.

Accordingly, we withdraw the Director's determination as to the second prong of the Dhanasar framework and conclude that the Petitioner has satisfied this requirement.

B. Whether on Balance a Waiver is Beneficial

The third prong requires a 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 performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, 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. Matter of Dhanasar, 26 I&N Dec. at 890-91.

USCIS considers the following combination of facts contained in the record to be strong positive factors: possession of an advanced degree in her field of endeavor; her achievements for her work; her knowledge and skills in her proposed endeavor; a plan with progress to further her proposed endeavor; and the interest and support of national and international members of the academic, professional, and community organizations in her field.

The Director determined that the Petitioner had not satisfied the third prong of the Dhanasar framework. Upon de novo review, we conclude that the waiver of the labor certification requirement for the Petitioner would, on balance, be beneficial to the United States.

The evidence demonstrates that, as a researcher with recognized academic distinction of [redacted] music, the Petitioner has academic knowledge and achievements in her field, published and presented work, and peer review activity. Letters from scholars and experts in the field describe in detail the importance of preservation of the music, history, and ethnic identity of the Assyrian culture and the Petitioner's unique personal background and musical, linguistic, and cultural skills making her uniquely qualified to research, document, and preserve the [redacted] tradition. In addition, the letters provide a well-reasoned analysis of why the labor certification process is not well suited for discovering researchers needed to research, document, and preserve the cultural heritage and ethnic identity of the Assyrian communities, specifically for [redacted] music. Based on the Petitioner's history of successful research; her plans for advancing her proposed endeavor's research; her unique skills; and the significance of her proposed work to advance the research, documentation, and preservation of the cultural history and ethnic identity of the Assyrian people, we conclude that she offers contributions of such value that, on balance, they would benefit the United States even assuming other qualified U.S. workers are available.

Accordingly, we hereby withdraw the Director's decision and find the Petitioner has demonstrated that she satisfies the third prong of the Dhanasar framework.

III. CONCLUSION

The Petitioner has demonstrated her eligibility for the underlying EB-2 classification and has met the requisite three prongs set forth in the Dhanasar analytical framework. We conclude that she has established eligibility for, and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.