U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29337610

Date: MAR. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a robotics and autonomous systems engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is in the national interest. 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 dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either a member of the professions holding an advanced degree 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 classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and

- 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 did not make a finding in the decision as to the threshold question of the Petitioner's eligibility for the underlying EB-2 immigrant classification. However, the Director stated in a request for evidence (RFE) that the Petitioner qualifies for the classification as an advanced degree professional. Based upon the Petitioner's doctor of philosophy degree (Ph.D.) in mechanical engineering from the [redacted] we conclude that the Petitioner qualifies as an advanced degree professional. The issue on appeal is whether the Petitioner has established that a waiver of the job offer requirement, and thus of a labor certification, is in the national interest. The Director found that the Petitioner's proposed endeavor has both substantial merit and national importance. However, the Director concluded that the Petitioner did not demonstrate eligibility for a national interest waiver because he did not establish that he is well-positioned to advance the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. For the reasons discussed below, we agree with the Director that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Matter of Dhanasar*.

A. Whether the Proposed Endeavor Has Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to research and develop autonomous aerial robots (drones) to improve their design, control, and path planning, with the goal of creating smarter and more capable robots. Based upon the probative and credible evidence in the record of the national interest in improved autonomous robotics technology, including for national security, infrastructure and transportation, and emergency response, and of the potential for further research and development in this area to impact the field, we agree with the Director that the Petitioner's proposed endeavor has both substantial merit and national importance.

B. Whether the Petitioner Is Well-Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual, and whether they are well-positioned to advance it. *Id.* at 890. In determining whether a petitioner is well-positioned to advance their proposed endeavor, we consider factors including but not limited to: the individual's

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the Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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, academic records, published work, peer review activity, recommendation letters, and information regarding the Petitioner's citation record. The Petitioner emphasizes on appeal that his citation record and peer review activity are significant and contends that the Director erred in concluding that the Petitioner's citation record is insufficient. The Petitioner also contends that the Director was improperly focused on whether the Petitioner has demonstrated his influence on the field, and that this is an improper standard to use.

Turning to the factors enumerated in *Matter of Dhanasar* for evaluating evidence under the second prong, we conclude that the Petitioner's education, skills, and knowledge are positive factors in support of his positioning to advance the proposed endeavor. Specifically, the Petitioner's Ph.D. in mechanical engineering relates to his proposed endeavor of developing autonomous aerial robots and his published research shows that he has the skills necessary to continue researching and improving their design, control, and path planning. In support of establishing his record of success, the Petitioner refers again on appeal to his citation record and peer review activity, asserting that the record demonstrates the significance of the Petitioner's citations and peer review activity and contends that the Director's conclusion that it is insufficient is contrary to the record. Upon de novo review, we agree with the Petitioner that the evidence appears to demonstrate that the published work that he has participated in and contributed to has been cited frequently by independent researchers at a rate that is high relative to others in the field. While this is a positive factor, we do note that the works which have received the most attention appear to be those in which the Petitioner was one of several contributors.

The next factors applicable to the second prong of the *Dhanasar* framework are a model or plan for future activities and any progress towards achieving the proposed endeavor. The Petitioner contends that he has provided a model or plan for his future research activities, specifically with a personal statement submitted in response to the Director's RFE stating that, "[t]o fulfill this endeavor, I plan to first work as a postdoctoral researcher in the United States. I am most interested in pursuing this position with the [redacted] My next step is to purse a long-term position in a U.S. university or research institute." The Petitioner also asserts that he has made progress toward achieving the proposed endeavor because he has "continued to pursue projects related to his proposed endeavor" and the updated Google Scholar profile submitted in response to the RFE shows that he has continued to present research and that his published research has continued to accumulate citations.

While the Petitioner may have the intention to pursue a research position in the United States, we conclude that the fact that the Petitioner does not currently have such a position weighs against demonstrating either a specific model or plan for future activities or progress toward achieving the endeavor. Although the Petitioner previously studied at the [redacted] and states that he will pursue a postdoctoral position at that university, the Petitioner did not provide evidence of support from the university for this position, nor evidence of funding for or availability of such a position. The Petitioner seeks a national interest waiver of the job offer requirement. Therefore, an offer of employment is not a requirement for approval, nor do we consider the lack of a job offer a negative factor in analyzing the evidence, depending upon the specific circumstances of the case. However, in this instance, the

Petitioner's own stated intention for advancing his endeavor requires an offer of employment, and he has not provided documentary evidence of pursuing this employment or any specific steps taken toward achieving employment. By contrast, the petitioner in *Matter of Dhanasar* was already employed as a postdoctoral research associate at a university, was performing research and development related to his proposed endeavor at this university, and intended to continue to do so. *See Matter of Dhanasar*, 26 I&N Dec. at 891. Moreover, the record does not demonstrate that the Petitioner has "continued to pursue projects" related to his endeavor; rather, the Petitioner's statement simply describes the projects that the Petitioner would intend to pursue if he is able to locate employment. Finally, we do not consider the fact that the Petitioner's prior published works have continued to accumulate citations to be evidence of the Petitioner's own progress toward achieving his endeavor. Without proposed employment in the United States, a statement of interest or support from a university or research institution, evidence of potential funding for such a position, or other such evidence, the Petitioner has not demonstrated that he currently has the ability to pursue his proposed endeavor.

The final factor enumerated in *Matter of Dhanasar* relates to evidence of interest of potential customers, users, investors, or other relevant entities or individuals. Here, we similarly conclude that the evidence in the record does not weigh in favor of demonstrating that the Petitioner is well-positioned to advance the endeavor. The Petitioner again emphasizes his citation record as evidence of interest from relevant entities or individuals. Additionally, the Petitioner contends that he has demonstrated this factor because the Defense Advanced Research Projects Agency (DARPA), the U.S. Department of Agriculture (USDA), and the U.S. Army Research Laboratory (USARL) are "major funding sources" of the Petitioner's research. However, we conclude that this assertion is not sufficiently established by the record. The record shows that the Petitioner was on a team that participated in a robotics competition organized and sponsored by DARPA. Additionally, the Petitioner submitted published articles he co-authored during his time at the [redacted] which indicate that the research was sponsored by either USDA or USARL under cooperative agreements. However, the record does not establish what these cooperative agreements are and, for example, whether they are simply pre-existing agreements that the agencies have with the university, or whether the Petitioner specifically applied for a received grant funding from these agencies for this research. By contrast, in *Dhanasar*, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. *Id.* at 893, Fn. 11. The evidence in the record regarding the Petitioner's funding from U.S. government agencies does not appear to be like in kind to the funding received by the petitioner in *Dhanasar*.

Not every individual who has conducted original research and published findings will be found to be well-positioned to advance their proposed endeavor. Rather, we must examine the factors set forth in *Matter of Dhanasar* to determine whether, for instance, the individual's education, skills, and record of success, their model or plan for future activities, their progress towards achieving the proposed endeavor, and the generation of interest among relevant parties supports such a finding. *Id.* at 890. In considering the record in totality, particularly the fact that the Petitioner has not demonstrated the ability to pursue his proposed endeavor in the United States through an offer of employment, a statement of interest, or other potential funding that would allow the Petitioner to pursue his endeavor, we conclude that the Petitioner has not established that he is well-positioned to advance the proposed endeavor.

C. Whether, on Balance, Waiving the Job Offer Requirement Would Benefit the United States

The third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification. Because the Petitioner has not demonstrated that he is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, we need not address whether the Petitioner has established the third prong of the *Dhanasar* framework. We acknowledge the Petitioner's arguments on appeal as to the third prong but, having found that the evidence does not establish that the Petitioner is well-positioned to advance the proposed endeavor, we will not address those arguments here. *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 alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.