U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-K-D-

DATE: MAY 2, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a teacher and autism spectrum disorder (ASD) education researcher, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer, and thus of a labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a motion to reconsider.[2] In January 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, the Petitioner submits a brief and additional documentation, asserting that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon review, we will deny the motion.

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[1] *See*

[2] The Petitioner was initially represented on motion by attorney withdrew her appearance in October 2016.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer –
> >
> > > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[3] *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. If these

[3] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[4]

II. ANALYSIS

The Petitioner filed the current motion to reconsider prior to the publication of *Dhanasar*, contending that our appellate decision under the *NYSDOT* framework was erroneous. Specifically, she asserted that we erred in determining that her "proposed employment would not benefit the national interest of the U.S. to a substantially greater degree than a similarly qualified U.S. worker" and that she had "not demonstrated a past history of demonstrable achievement with some degree of influence on the field as a whole." The Petitioner's arguments, however, do not establish that our appellate findings were based on an incorrect application of the *NYSDOT* framework, law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was incorrect based on the evidence before us at the time of the decision. Furthermore, as discussed below, the record does not show that the Petitioner meets the eligibility requirements under the *Dhanasar* framework.

[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

A. Background

The Petitioner received a master of science degree in education from [redacted] in 2004. Accordingly, the Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The sole 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.

In Part 6 of the Form I-140, the Petitioner listed her job title as "teacher" and indicated that she sought to "develop groundbreaking treatments for autistic disorders." The record reflects that, from 2008 until 2013, she worked as a public school teacher at [redacted] in Florida. Subsequently, the Petitioner began working at the [redacted] as a graduate teaching assistant and internship coordinator while pursuing a doctorate degree in exceptional education. Since 2013, she has been a [redacted] and doctoral student in the exceptional education Ph.D. program at [redacted] The Petitioner contends that she "has contributed seminal research and methodologies in the treatment of ASD" which will be used to teach others in the field nationally and internationally.

B. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner previously indicated that she is "an innovative teacher and educational program developer for students with autism spectrum disorder." She further explained that she is "using her expertise for the development and expansion of novel teaching and assessment methods to increase the knowledge base and understanding of educational approaches and curriculums that engender improvement in the verbal, cognitive, and behavioral skills of children along the autism spectrum."

On motion, the Petitioner asserts that her "research on the issue of mirror intervention and self-awareness in students with Autism is seminal and groundbreaking." She further states that she is "contributing seminal research and methodologies in the field of endeavor that others have not previously considered and that has [*sic*] wide reaching implications."

Our RFE asked the Petitioner to provide updated information and evidence regarding her current employment, if any, and her plans for future work in the field. In response, the Petitioner offers her curriculum vitae (CV) and indicates that the document provides "updated information regarding current employment" and research projects. While the CV lists the Petitioner's past accomplishments and identifies her as a current doctoral student at [redacted] it does not address her specific plans for future work in the education field. For example, the Petitioner does not indicate whether she intends to work as a classroom teacher, an ASD education researcher, or both. Rather, the RFE response elaborates on the Petitioner's current work as both "a teacher and researcher" in the area of ASD.

The Petitioner explains that her proposed endeavor furthers "the goal of improving education and programs for U.S. children." She states that the "goal of autism education is to help with symptoms

of the disorder while improving the child's ability to talk, interact, play, and care for his or her own needs." In addition, the Petitioner indicates that one in 68 children in the U.S. has been identified with ASD, that the U.S. autism rate is increasing, and that the costs associated with children having ASD in the United States ranged from "11.5 billion - $60.9 billion in 2011."

Whether as a teacher, researcher, or both, we find that the Petitioner's proposed work, which aims to improve the learning environment and self-sufficiency of ASD students, has substantial merit. In her letter, professor and coordinator of the special education Ph.D. program at contends that there is "an extreme shortage of faculty in the field of special education" and that our country's large population of autism students makes the Petitioner's endeavor "critical to the future of our country." adds that "[f]inding ways to support this growing population of students to connect with humans by learning to better understand" themselves "is an area of crisis in education and society in general." Furthermore, the chair of the Petitioner's dissertation committee, notes that the Petitioner's "work contributes to the body of knowledge in the field of disability as a whole, particularly in the area of autism spectrum disorders." The record includes additional reference letters discussing how the Petitioner's research concerning ASD students will help them become self-aware and may decrease their problematic behaviors.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of her work. Specifically, we requested documentation demonstrating that her proposed endeavor has broader implications for her field. In her response, the Petitioner included information indicating that our nation faces a shortage of teachers in the field of autism education. The record, however, does not establish that her classroom instruction would impact ASD education more broadly, as opposed to being limited to the students at the institutions where she teaches. Accordingly, without sufficient documentary evidence of their broader impact, the aforementioned teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.[5]

Nonetheless, to the extent that the Petitioner proposes to conduct ASD education research, we find the evidence sufficient to demonstrate that such research is of national importance. For example, the record includes letters from faculty at discussing her research concerning ASD students and its potential benefit to our nation's educational system. In addition, the Petitioner has submitted documentation indicating that the proposed benefit of her autism education research has broader implications, as the results are disseminated to others in the field through education journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

[5] Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

C. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner previously submitted documentation of her published work, conference presentations, professional memberships, and academic credentials (master's degrees in elementary education, and educational organization and administration). She also submitted various reference letters discussing her educational background, teaching experience, and research projects. In response to our RFE, the Petitioner additionally submits her CV, documentation acknowledging her participation in conferences after the Form I-140 was filed, and a letter indicating that she was part of a group that helped revise the training programme" (2016). In addition, the Petitioner provides a special education grant of $47,347 stating that she has a "service obligation" of 64 months, peer review solicitations (2014 – 2017), invitations to publish and present her research (2015 – 2017), and the aforementioned letters of support from and .

As discussed below, the Petitioner has not demonstrated a record of success or progress in her field, or a degree of interest in her work from relevant parties, that rises to the level of rendering her well positioned to advance her proposed research endeavor of developing and expanding novel instructional and assessment methods to improve the verbal, cognitive, and behavioral skills of ASD students.[6] *See Dhanasar*, 26 I&N Dec. at 890. The Petitioner maintains that her graduate research is indicative of her "proven record of success in her field." In letters of support, her professors at discuss her research aimed at using "social emotional learning and knowledge of self to assist students with autism in learning basic social skills." For example, mentions the Petitioner's ' in the (published online 2013). contends that the Petitioner's "research on mirrors is a seminal publication" that represents a unique contribution she has made to the field. Similarly, states that the Petitioner's work used "a novel and highly innovative mirror intervention to increase awareness of 'self' and 'other' in individuals with autism" and that her research "is seminal and groundbreaking."

With regard to the Petitioner's journal articles and conference presentations, we note that they were all published or presented after the filing date of the Form I-140, and therefore do not establish her eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Regardless, the Petitioner has not shown, for instance, that her research has been frequently cited by independent educational scholars or otherwise served as an impetus for progress in the field, or that it has generated substantial positive discourse in the broader academic community. Nor does the record indicate that her findings have been implemented as part of ASD education initiatives, or that her work has affected special education practices.

[6] As noted above, the Petitioner has not demonstrated that her proposed teaching activities meet the "national importance" element of the *Dhanasar* framework's first prong. Accordingly, we will limit our analysis under this prong to her proposed research.

Furthermore, the remaining evidence is not sufficient to show that the Petitioner is well positioned to advance her endeavor. We note that her advisory role in revising the training programme" in 2016, peer review solicitations (2014 – 2017), and invitations to publish and present her research (2015 – 2017) also post-date the filing of the Form I-140. As such, the aforementioned documentation does not render her well positioned at the time of filing. The Petitioner has also failed to establish that advising regarding its training program and receiving requests to perform peer review and to publish and present her work make her well positioned to advance her proposed research.

Finally, the Petitioner provided evidence relating to her experience as a high school special education teacher and as a teaching assistant at The Petitioner offered reference letters discussing her experience as special education teacher at For instance, a general education lead instructor at the noted that the Petitioner provided an "excellent classroom environment for her students" with ASD by introducing a pet therapy program, and by obtaining grants for a and 10 cameras. In addition, a colleague of the Petitioner's, stated that she "provided resources and collaborated with special education and general education teachers at and across The record also reflects that the Petitioner served as a teaching assistant at for three courses entitled "Introduction to Behavior Management," "Critical Issues in Exceptional Education," and "Teaching Exceptional Students." We note that all three courses commenced after the Form I-140 was filed. Nonetheless, the evidence does not establish that the Petitioner's high school special education experience with and her work as a "teaching assistant" at render her well positioned to advance ASD education research.

The evidence discussed above is insufficient to demonstrate a record of success or progress, a degree of interest from relevant parties, or another factor that renders the Petitioner well positioned to advance her proposed endeavor. Accordingly, she has not established that she satisfies the second prong of the *Dhanasar* framework.

D. Balancing Factors to Determine Waiver's Benefit to the United States

The Petitioner asserts that "[e]ffective ASD education and methodologies take more than a certain degree and a set number of years of experience" and that she possesses "intangible qualities that could not be adequately stated or demonstrated through the labor certification process."[8] She also contends that it is "very unlikely that an available U.S. applicant would meet even the minimum acceptable

[7] stated that he became acquainted with the Petitioner through a relative who worked with her at

[8] The labor certification process is designed to certify that a foreign worker will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from operational necessity.

criteria."[9] The Petitioner further maintains that "the extremely significant benefits of [her] work clearly outweigh the national interest in having her participate in the labor certification process."

While we acknowledge the likelihood that some of the Petitioner's knowledge and experience may exceed the minimum requirements for her occupation and therefore could not be easily articulated on an application for labor certification, she has not demonstrated, as claimed, that she presents benefits to the United States through her proposed endeavor that outweigh those inherent in the labor certification process. With respect to development and expansion of novel teaching and assessment methods that improve ASD students' learning environment and social functioning, the Petitioner has not shown an urgent national interest in her own efforts to achieve this aim, nor has she demonstrated that she offers contributions of such value that, over all, they would benefit the nation even if other qualified U.S. workers were available. In sum, the Petitioner has not demonstrated 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. The Petitioner therefore has not established that she meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-K-D-*, ID# 220146 (AAO May 2, 2017)

[9] This argument, however, undermines the claim that it would be impractical to obtain a labor certification. The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process.