U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-

DATE: MAY 11, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computational mathematics 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 the 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 Nebraska 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 he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. In February 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*.

In support of his appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver due to his "interdisciplinary contributions" and the "highly selective" nature of the aerospace engineering field.

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 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.
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> > (B) Waiver of job offer –
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> > > (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.[1] *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 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

[1] 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*).

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.[2]

II. ANALYSIS

The Petitioner holds a PhD in aerospace engineering from [redacted] Accordingly, the Director determined that the Petitioner qualified for classification 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.

A. Substantial Merit and National Importance of the Proposed Endeavor

In the initial filing, the Petitioner described his educational credentials and research interests, commenting that he wished to continue his research in quantitative analysis and mathematical statistical modeling. In response to our RFE, the Petitioner maintains that he intends to continue his work studying failure mechanisms of "large scale, complex, interconnected engineered systems such as the electricity grid and transportation systems such as the air traffic system, road traffic networks." He describes how his work aims to develop "simple but elegant models to capture and analyze failure mechanisms of these safety and economically critical infrastructure systems" using concepts of physics known as self-organizing systems. He specifically intends to investigate whether engineered systems exhibit the properties and behaviors of self-organizing systems and, if so, "how this knowledge can be leveraged and designed to improved performance and safety of organized systems."

On appeal, the Petitioner supplements the record with several job postings for potential positions in his field for which he has interviewed.[4] These include openings for research scientists or research

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

[3] We also note that the Petitioner earned a master of science degree in aeronautics in 2007 and a master of science degree in computational and mathematical engineering in 2005 from [redacted]

[4] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these prospective positions to illustrate the type

engineers for private companies developing machine intelligence to solve infrastructure problems such as air traffic control procedures and traffic safety. We find that the Petitioner's proposed work, in which he aims to use statistics and mathematical theory to develop solutions for failure mechanisms in large-scale transportation and infrastructure systems, has substantial merit.

With respect to the national importance of the Petitioner's proposed endeavor, our RFE asked for evidence documenting the "potential prospective impact" of his work. In response, the Petitioner again points to the three potential private sector positions indicating that the employers are "seeking, in common, to leverage and utilize my skills and advanced knowledge in linear and nonlinear controls, systems, mathematical modeling, machine learning, optimization, numerical methods and computational mathematics." Although the Petitioner contends that these job offers are evidence that his research is nationally important, he has not explained how job offers in his field demonstrate his potential prospective impact.

We note that the Petitioner has not explained whether he intends to accept any of the researcher positions described, what his proposed duties may be, or whether his proposed endeavor would change if he moved from academia to the private sector. Nonetheless, to the extent that the Petitioner proposes to conduct engineering research related to transportation and infrastructure systems, we find the evidence sufficient to demonstrate that such research is of national importance. The Petitioner submits an article from the [redacted] describing the need for a redesign of the U.S. air traffic management system, several articles applauding the technological advances in developing self-driving cars, and explaining the critical need for new and improved models in air and traffic transportation systems. He also offers several newspaper articles reporting on transportation and electric grid disruptions on the Eastern seaboard. We find that his intended research stands to have broader implications beyond any one company or organization, whether through the applied development of engineering solutions for infrastructure problems or through research for dissemination to others in the field through professional journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he meets the first prong of the *Dhanasar* framework.

B. 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 sent evidence of his published work, professional memberships, and academic credentials. In response to our RFE, the Petitioner additionally submits his CV, an updated report from [redacted] and download statistics from the [redacted] indicating that his PhD dissertation has been viewed 113 times.

As discussed below, we find the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, rising to the level of rendering him well

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of position the Petitioner seeks and the capacity in which he intends to work.

positioned to advance his proposed research endeavor of developing models to capture and analyze failure mechanisms of safety and economically critical infrastructure systems. *See Dhanasar*, 26 I&N Dec. at 890. The Petitioner maintains that his graduate research is indicative of his "proven record of success in his field," however, the record does not sufficiently support his contention. He states that while he was a graduate student at [redacted] he developed software tools that were used by cancer researchers in a study of RNA/DNA sequence alignment, and he provides a copy of the acknowledgment section of the article published in the journal [redacted] in 2007 recognizing his contribution. He has not explained, however, how his development of software tools for a cancer research project relates to his stated goal of developing engineering solutions for infrastructure problems.

The Petitioner also maintains that his PhD dissertation was published in a prestigious physics journal, [redacted] reflecting his "interdisciplinary contribution." He contends that his PhD in aerospace engineering "is of great national interest to the United States providing national, global, and strategic advantage to the United States," and that the field is "highly selective and restrictive." The Petitioner does not offer evidence that his degree in aerospace engineering "strategically advantages" the United States, nor has he documented that his doctoral 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 positive interest among relevant parties in the broader academic community, industry, or government.

On appeal, the Petitioner contends that his work has not been cited extensively because he publishes in a "narrow segment of the field" and due to the "young age of the publications." He does not, however, offer comparative statistics explaining how often other engineering researchers are cited to support his assertion that his field is too narrow to be frequently cited. Nor does the record otherwise demonstrate that his graduate research constitutes a record of success to meet this prong. While the Petitioner points to the fact that his dissertation has been viewed 113 times, he has not presented evidence illustrating the significance of this number, or establishing that the research has been implemented, utilized, or applauded by those viewing it. Moreover, the record does not indicate that his findings have been employed by government or private sector entities, or that his work has affected specific infrastructure development or failure mechanism projects.

The evidence discussed above is insufficient to demonstrate a record of success or progress or a degree of interest from relevant parties that render the Petitioner well positioned to advance his proposed endeavor, and the record does not include evidence of another factor satisfying this prong. For this reason, the Petitioner has not established that he satisfies the second prong of the *Dhanasar* framework.

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

Third and finally, we conclude that on balance, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[5] While we recognize the likelihood that some of the Petitioner's knowledge and experience may exceed the minimum requirements for his occupation and therefore could not be easily articulated on an application for labor certification, he has not demonstrated, as claimed, that he presents benefits to the United States through his proposed endeavor that outweigh those inherent in the labor certification process. With respect to development of engineering solutions to infrastructure failure mechanisms, the Petitioner has not shown an urgent national interest in his own efforts to achieve this aim, nor has he demonstrated that he 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 he 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 he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-C-*, ID 119901 (AAO May 11, 2017)

[5] The labor certification process is designed to certify that the 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 business necessity.