U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33940250

Date: NOV. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an archeologist, 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 Texas Service Center denied the petition, concluding the Petitioner did not establish that he 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 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the underlying 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. 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. 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if 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.

Id.

II. ANALYSIS

The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.[2] The issue on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.[3]

The Director determined that the Petitioner demonstrated his proposed endeavor has substantial merit and is of national importance under the first prong of the Dhanasar analytical framework. However, the Director determined that the Petitioner did not establish that he is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong, or 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 under *Dhanasar's* third prong. Upon de novo review, the Petitioner did not demonstrate that he is well-positioned to advance his proposed research under *Dhanasar's* second prong or that a waiver of the labor certification would be in the national interest.

A. Substantial Merit and National Importance

In determining the Petitioner's proposed endeavor has substantial merit and is of national importance, the Director did not specify the Petitioner's proposed endeavor or provide reasoning for the finding.

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

The Petitioner's Form I-140 states that he intends to work in the United States as a post-doctoral scholar and archaeological scientist specializing "in field investigations, analyzing artifacts, excavating sites, managing the logistics of projects at sites, writing reports and recommendations, teaching, conducting research, and publishing the results of [the] research in academic journals." His statement explained that he specializes in Egyptian Mamluk architecture and that U.S. universities are

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

[2] The record indicates that the Petitioner received the foreign equivalent of a U.S. doctorate degree in Islamic archeology from [redacted] in Egypt in 2016.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

interested in Middle Eastern civilization. Utilizing his experience with Egyptian Mamluk architecture, he intends to pursue three endeavors, educate U.S. university students; perform research in archaeology and publish his research results in academic journals; and participate in media production, including television, magazines, and press.

In his request for evidence response, the Petitioner elaborated on the details of his proposed research, indicating his main endeavor is to conduct research on "African American archaeology and comparing it to the Mamluk civilization." His research seeks to "understand how historical slavery has influenced the daily lives and architecture of African Americans." For his research, he would "examine the lasting impact of slavery on [African American] communities, traditions, and built environments" and compare the archaeological findings with the Mamluk civilization in order to "draw connections, identify patterns, and gain insights into the unique experiences and challenges faced by African Americans as a result of their history." He explained that he recently moved to North Carolina and wanted to advocate for expanding and preserving African heritage museums and the historical area to raise awareness and understanding of African American history in his North Carolina community. With respect to the Petitioner's proposed research work comparing African American archaeology and to the Mamluk civilization, we find it has substantial merit and is of national importance.[4]

In his request for evidence reply, the Petitioner indicated that subsequent to filing this petition, he started working in the United States in three positions: a co-director of an archeology research project at the [redacted]; a director of a research project at [redacted] in New York; and an archaeologist and paleontologist for [redacted] His job duties at [redacted] include grant writing, aiding researchers as a site mapper and artifact curator for research on prehistoric quarries in the National Forests of North Carolina, and being a liaison with mining and quarrying companies in Egypt.

For his work with [redacted] the Petitioner does not elaborate on the specifics of his work. In addition, the Petitioner cannot materially change the proposed endeavor after submitting his petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). The purpose of a request for evidence is to elicit further information that clarifies whether a petitioner has established eligibility for the benefit sought as of the time the petition was filed. See 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner may not make material changes

[4] The Petitioner's statements mainly focus on his research work, and he did not provide evidence explaining his proposed teaching activities and media production work. Without further details of the teaching activities and media production work, we are unable to determine whether either endeavor is of substantial merit or of national importance. We held in Dhanasar that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. An endeavor is more specific than a general occupation and should include details of the types of work a petitioner intends to undertake and describe specific projects and goals. See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual. Moreover, in Dhanasar, we discussed how teaching would not impact a field broadly in a manner which rises to national importance. The benefit of someone's teaching is generally only directly beneficial to the students being taught and not the wider population. See Matter of Dhanasar, 26 I&N Dec. at 893. Similar to Dhanasar, the Petitioner's proposal to teach at a U.S. university would not rise to the level of national importance. Accordingly, the Petitioner's endeavors of teaching and media production do not include details specific enough for us to determine whether either has substantial merit or is of national importance, and therefore, do not meet the first Dhanasar prong.

to the petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record as at the time of filing. Without further evidence, the Petitioner's new employment with [redacted] materially changes his initially indicated proposed endeavor and are not considered for this petition.

B. Well-Positioned to Advance the Proposed Endeavor

The second Dhanasar prong shifts the focus from the proposed endeavor to the Petitioner. 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 at 890. Upon consideration of these factors, we agree with the Director's determination that the Petitioner has not demonstrated he is well-positioned to advance his proposed endeavor.

On appeal, the Petitioner claims that the Director erred in the decision by narrowly interpreting the evidence instead of considering its cumulative impact. He further argues that the Director did not review all the evidence and overlooked evidence, including a university invitation to serve on a dissertation panel, an opinion from a university professor highlighting his contributions to the field of archeology, and his scholarly publications in academic journals. The Petitioner emphasizes that the evidence documents his education, depth of knowledge, and record of success in work related to his proposed endeavor. In addition, he claims the evidence shows a clear plan for his endeavor, progress he has already made, and interest and support from academics and professionals in his field.

The record includes the Petitioner's academic records for his bachelor's of arts in archeology from [redacted] in Egypt and his master's degree and Ph.D. in Islamic archeology from [redacted] While his Ph.D. renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well-positioned to advance his proposed 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. We look to a variety of factors in determining whether a petitioner is well-positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding. See id. In Dhanasar, we also favorably considered the significance of his research which had been corroborated by evidence as having peer and government interest; the significance of his role in his research projects; consistent funding from government agencies of his research projects; and his position with a U.S. university where he intended to conduct his proposed research work. Id. at 892-93. Whilst we do not question the Petitioner's education, skills, or knowledge as an archeologist, the Petitioner has not established that his education, skills, or knowledge demonstrate a record of success in efforts related to or similar to his proposed endeavor, progress towards achievement of his proposed endeavor, or interest from other individuals or entities.

To show his record of success, the Petitioner emphasizes letters from university professors. While the professors' letters state they reviewed the Petitioner's academic credentials and achievements, they do not detail how the mentioned contributions and achievements demonstrate progress in his field or a record of success. An opinion from an associate professor with the Department of Earth and Ocean Sciences and the Director of Space and Drone Remote Sensing Lab at the [redacted] describes the Petitioner's research endeavor and the importance of preserving and understanding ancient civilizations. However, when evaluating the second prong of the Dhanasar analytical framework, we turn to the Petitioner's successful past performance in the proposed endeavor, as well as evidence and information of his achievements and recognition, not the endeavor's importance. See id. at 890.

The opinion letter does not detail the Petitioner's achievements; instead, generally states, "[the Petitioner's] educational achievements and research experience provide a strong foundation for his proposed endeavor in scientific research" and that "[h]is work has been widely regarded as groundbreaking and influential." Moreover, the Petitioner does not explain how the professor's academic background in earth and ocean sciences is relevant to the Petitioner's field of archeology or is qualifying to express having the claimed expert opinion on the Petitioner's education and professional achievements in his field.

Another opinion from a professor of Egyptology at [redacted] explains the importance of the field of archeology and attests to the Petitioner's knowledge of Mamluk era studies. While the opinion names the Petitioner's professional work, it does not detail how his work has gained the interest of others or constitutes a record of success or progress rending the Petitioner well-positioned to advance his proposed endeavor. For instance, the opinion names the Petitioner's scholarly articles and indicates they show his depth of understanding in the field. The opinion, however, only provides generalizations of the Petitioner's record of success by stating, "[the Petitioner's] significant contributions to Mamluk studies have not only enriched our knowledge but also paved the way for further exploration and scholarship in this captivating field." Likewise, the opinion generally references that the Petitioner's participation in conferences "contributed valuable insights to the international archaeological community." The opinion does not explain in detail how the Petitioner's conference participation contributed to the archaeological community or otherwise make him well-positioned to advance his proposed endeavor.

The opinion also indicates the Petitioner's current research of food practices along the Nile River and his previous archeological research are instrumental in promoting scholarly discourse and knowledge dissemination on important historical periods. The opinion, however, does not detail how his research on food practices along the Nile River or his other research relates to his proposed research comparing African American archaeology to the Mamluk civilization, or otherwise renders him well-positioned to advance his endeavor. Not every individual who has conducted original research and published findings will be found to be well-positioned to advance their proposed endeavor.

Next, the Petitioner points to certificates of appreciation and letters of recommendation from scholars in his field and his previous employers. While these letters attest to the Petitioner's research skills and his knowledge and work with Islamic architecture and art, they do not show how his work represents a record of success or progress rending him well-positioned to advance his proposed endeavor. For instance, a letter from the [redacted] in Egypt commends the Petitioner's

work as an archaeologist and his contributions to cultural preservation and historical research in Egypt. The letter praises the Petitioner's work in supervising restoration projects, discovery and preservation of antiquities, and his dedication to his work, including his archeology work at the [redacted] his organization of conferences, and his work on the architecture of palaces. Additional letters from his colleagues reference the Petitioner's participation at conferences and training sessions, as well as generally praise his research abilities, professionalism, work ethic, and cultural heritage knowledge while recommending him for fellowships, academic programs, and archeology research. However, the letters do not specify how this work is related, or similar to, his proposed endeavor and constitutes a record of success for his proposed research work on African American archaeology and comparing it to the Mamluk civilization.

The Petitioner emphasizes a letter from Dr. J-S-, a co-director of [redacted] and a professor with the School of Advanced Studies at the [redacted] The letter references the Petitioner's Ph.D. thesis, [redacted] and highlights the Petitioner's employment with [redacted] in Egypt, "one of the largest and most important archaeological sites in Egypt." Dr. J-S- also attests to the Petitioner's knowledge and experience in his field, stating he "will continue to make significant contributions to archaeology" and generally recommends the Petitioner to further develop his "career and intellectual initiatives." Like the other recommendation letters, the letter from Dr. J-S- attests to the Petitioner's professional skills and knowledge as an archeologist, however, does not detail how the Petitioner's previous work constitutes a record of success for his proposed research work.

Next, the Petitioner argues his record of success is evidenced through his peer review of others in his field and his participation in conferences relating to archeology and the Islamic culture. In support of his peer review work, the Petitioner submitted an invitation from a university to activities related to a student's Ph.D. thesis. However, it is not clear from the record the extent of his peer review or whether his level of participation in the peer review process represented a record of success in his field or is otherwise an indication that he is well-positioned to advance his proposed endeavor. For his conference presentations, the Petitioner submitted certificates acknowledging his participation and letters of recommendation referencing the conferences. However, he did not submit his conference articles or other evidence explaining the conference presentations to understand whether they sufficiently relate to his proposed endeavor. Without further evidence, we are unable to determine whether his conference presentations relate to the proposed endeavor or have garnered the interest of other researchers in his field.

Moreover, the Petitioner did not provide details of how he intends to carry out his proposed endeavor except to indicate that he has been offered many teaching and researcher positions in the United States. The Petitioner did not include evidence of the claimed academic institutions or others having interest in him carrying out his proposed research work. While he submitted letters relating to his current research work with [redacted] the evidence does not show how his research of food practices along the Nile River with [redacted] is related to his proposed endeavor to research African American archaeology and comparing it to the Mamluk civilization.

In Dhanasar, the petitioner showed government interest in his research by providing evidence that he obtained government funding supporting his research, he "initiated" or was "the primary award contact on several funded grant proposals," and he was "the only listed researcher on many of the grants."

Matter of Dhanasar, 26 I&N at 893, n.11. Here, the Petitioner claims that academic institutions are interested in his research work. However, other than colleagues taking note of his proposed endeavor, the Petitioner has not offered evidence supporting such claimed interest. Without sufficient evidence demonstrating the means or financial support to undertake his proposed research in the United States, the Petitioner has not demonstrated that his plan for future activities renders him well-positioned to advance the proposed endeavor.

Based on the foregoing, the Petitioner has not established he is well-positioned to advance his proposed endeavor and he does not meet the second prong of the Dhanasar framework.

Because the documentation in the record does not sufficiently establish the Petitioner is well-positioned to advance the proposed endeavor as required by the second prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility under the third prong of the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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).

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the Dhanasar analytical framework, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.