U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34871873

Date: NOV. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a data scientist, 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 that the record did not establish that the Petitioner was well-positioned to advance the proposed endeavor or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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 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 concluded that the Petitioner is a member of the professions holding an advanced degree. Upon de novo review, we agree. Therefore, the sole issue on appeal is whether she is eligible for, and merits as a matter of discretion, a national interest waiver. The Director determined that the Petitioner demonstrated that her proposed endeavor has both substantial merit and national importance, but that she did not demonstrate that she is well positioned to advance her endeavor or that on balance, waiving the job offer requirement would benefit the United States.

For the reasons discussed below, we conclude that the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner proposes to continue her work using "dynamical theories to analyze the intensity and duration of global warming-induced extreme climate patterns in order to evaluate the effects of climate change," utilizing climate modeling and data analysis.

The Director determined that the Petitioner provided sufficient evidence to meet this prong of the *Dhanasar* framework. Our review of the Petitioner's submissions, highlight the broader benefit and implications of the Petitioner's work. By helping to develop more accurate climate prediction methods, the Petitioner's work has the potential to mitigate the effects of climate change driven weather events, thereby reducing the economic damage and human health impacts of these events. We therefore agree with the Director's determination that the Petitioner has demonstrated both the substantial merit and national importance of her proposed endeavor.

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

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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 the Petitioner did not establish that she is well positioned to advance her endeavor. Following our de novo review, we disagree. The Petitioner earned a Doctor of Philosophy with the special subject of earth, environmental and planetary science in 2023, and since that time has worked as a data scientist and researcher. She presented letters from other professionals in her field attesting to the Petitioner's skills and the importance of her past research. For example, the letter from Dr. [redacted] conferred that the Petitioner's research in stratospheric warming in the Southern Hemisphere has been beneficial to the understanding of ozone recovery on stratospheric warming trends and the alteration in climate dynamics across time. She also presented her journal articles, citation history for her work, a presentation abstract, and her work history. Considering the totality of the evidence, we conclude that the Petitioner is well positioned to advance her proposed endeavor.

C. Whether on Balance a Waiver is Beneficial

The Director determined the record did not demonstrate the proposed endeavor would be beneficial to the United States, we disagree. 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 factors 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.

When evaluating the third prong, USCIS considers it a strong positive factor if the Petitioner possesses an advanced STEM degree, will be engaged in furthering a critical and emerging technology, and is well positioned to advance the proposed STEM endeavor. *See* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. As a researcher with a doctorate, the Petitioner possesses considerable experience in climate change research. Additionally, the Petitioner's documentation of her past successes, shown through journal articles, a presentation abstract, her work history, and letters of recommendation from others in her field, demonstrate that her proposed endeavor could significantly help mitigate the impact of climate change.

Based on the Petitioner's track record and the significance of her proposed work in climate patterns, we conclude that she offers contributions of such value that, on balance, would benefit the United States even if other qualified U.S. workers are available, and they are sufficient to justify a waiver of

the EB-2 classification's job offer requirement. The Petitioner, therefore, meets the third prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that she has established that she is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.