U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828417

Date: NOV. 4, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a petroleum engineer, 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 immigrant 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 Petitioner qualified for the EB-2 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 labor certification, would be in the national interest. 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 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884 (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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts to conclude the national interest waiver determination is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Petitioner filed this petition in September 2023. At the time of filing, the Petitioner was a doctoral research student in the field of petroleum engineering at [redacted] in Texas.[2] After analyzing the initial evidence, the Director issued a request for evidence (RFE), noting deficiencies in the record, to which the Petitioner timely responded.

The Director determined the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. We agree. 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.

A. Prong One of the *Dhanasar* Framework

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

B. The Proposed Endeavor

The Petitioner's proposed endeavor is described in his initial personal statement where he explains that he intends to continue his research on investigating and improving oil well stimulation to develop stimulant-based products in order to increase oil recovery from production wells and decrease wastewater production and pollution associated with oil production operations. The Petitioner explained that he will carry out his endeavor as a senior functional engineer at [redacted] a position he now holds. The Petitioner describes that in this position, he runs experiments such as core floods, measuring surface tension, interfacial tension, contact angle, and viscosity for enhancing well flowback and oil recovery. He further explains he will publish petroleum engineering research in

[2] On appeal, the Petitioner provided his diploma showing he completed his PhD in December 2023.

peer-reviewed journals and conferences and that he will use [redacted] network of business channels, outreach, and research foundations to disseminate his research. The Petitioner clarified in his RFE response that his proposed research, testing, and evaluation of oil well stimulation to develop stimulant-based products is focused on "offer[ing] several new products each year that can be added to [his employers] sales tool," and that his current employment position is "perfect" to help him advance his proposed endeavor because it will allow him to carry out research on products and publish his work about the products in journals and present it at conferences. The Petitioner explains this will help his employer by exposing them to more customers to gain more deals to increase revenue and profits. The Petitioner further notes that in the long term, he plans to have his own company to sell "green products, mainly carbon nanotube-based products that help oil and gas companies produce more oil." In his RFE response, the Petitioner also stated that his proposed endeavor is separate from his employment however his employment confirms his "commitment and capacity to advance the proposed endeavor in [his] employment."

C. Analysis of Prong One of the *Dhanasar* Framework

The Director determined that the Petitioner's proposed endeavor is of substantial merit. As stated above, an endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In addition to his personal statement, the Petitioner provided reference letters and news articles, reports, and government publications related to the oil industry, greenhouse gas emissions, and sustainable energy sources to combat climate change.[3] Therefore, we agree with the Director's determination that the endeavor has substantial merit. However, while the Petitioner has established his proposed endeavor has substantial merit, he has not established its national importance, for the following reasons.

As stated above, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. *Matter of Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we noted that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Here, the Petitioner asserts that the potential prospective impact of his proposed endeavor is that it will support the field of petroleum engineering's efforts to develop more environmentally friendly oil and gas extraction technologies by developing, promoting and emphasizing products tested or evaluated as part of his research. Furthermore, the Petitioner asserts that his proposed endeavor facilitates the development of technology and product advancements in environmental health for fracking and involves mitigating water waste by providing a "novel non-

[3] The Petitioner's initial evidence included the following reports and articles: the United Nation's "sustainable development goals" (2023). The seventh goal is ensuring access to clean and affordable energy, which is "key to the development of agriculture, business, communications, education, healthcare and transportation."; Energy for Progress' publication "Natural Gas Provides A Reliable Foundation of Power to the Entire Country" (2022) discussing natural gas as a critical energy source; the U.S. Energy Information Administration's "Electric power sector CO2 emissions drop as generation mix shifts from coal to natural gas" (2021) discussing the reduction of CO2 emissions; and the API's "Carbon Nanotubes – Potential Game Changer in Push for Climate Innovation" (2021) on the value of carbon nanotubes in climate innovation. In response to the Director's RFE, he provided: the JRC Science for Policy Report "GHG Emissions of All World Countries," 2023, which discusses global greenhouse gas emissions; the White House's Federal Sustainability Plan (December 2021), discussing the government's role is sustainability efforts; and an article concerning carbon nanotubes as a potential gamechanger in climate innovation, which discusses Rice University's research in collaboration with the Shell company.

toxic, organic alternative to post-fracking water shut-off technology." He asserts that the benefits of this include lowering the pollution associated with post-fracking. In addition, the Petitioner asserts he will similarly further his research on carbon nanotube products, which do not seep into the air like traditional carbon dioxide flooding methods, to develop carbon-mitigating technologies, and that carbon nanotubes are the "building blocks for the next generation of low-carbon materials and carbon-neutral technologies," with a range of valuable applications. Ultimately, he asserts that the goal is to significantly reduce global carbon emissions, which is of national importance due to the increase in greenhouse gas and cites to statistics showing that the United States released the second-highest amount of carbon emissions in 2022. As stated above, the Petitioner plans to start a company that sells "green products, mainly carbon nanotube-based products that help oil and gas companies produce more oil." However, the record does not establish that this work will be of national importance because the evidence in the record does not materially, relevantly, or probatively demonstrate that the products subjected to the Petitioner's researching, testing, and evaluation have the requisite national, or even global impact, or broader implications such that the Petitioner's endeavor to research, test, and evaluate them rises to level of national importance. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). And the Petitioner also asserts that the Director failed to consider his degree in a STEM field a USCIS priority. We note, however that many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 890. In this case, the Petitioner has not persuasively established by a preponderance of the evidence how his proposed endeavor, as described below, would affect a STEM field or industry in a manner consistent with national importance.

The Petitioner has provided multiple letters of support for his endeavor. In evaluating the national importance of Dr. Dhanasar's proposed endeavor, we gave significant weight to "probative expert letters from individuals holding senior positions in academia, government, and industry that describe the importance of hypersonic propulsion research as it relates to U.S. strategic interests" and "detailed expert letters describing U.S. Government interest" in his specific research. *Matter of Dhanasar*, 26 I&N Dec. at 892. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility, thus, the submission of these support letters is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The letters the Petitioner submitted do not sufficiently explain how "the newly developed products" stemming from and subject to his research, testing and evaluation will impact the field of oil extraction, the petroleum industry or matters of national or global importance more broadly. *See Matter of Chawathe*, 25 I&N Dec. at 375. We acknowledge the Petitioner's seven letters, which generally speak to the substantial merit of the Petitioner's endeavor; however, they are insufficient to establish the endeavor's national importance for the following reasons. To begin, none of the letters address the national, of even global, impact or broader implications of the products he has developed or intends

to develop in that role. *Id.* Furthermore, the description of the Petitioner's past research and publications contained in the letters does not sufficiently describe how that research has had national, or global impacts or that it implicates matters rising to a level of national importance more broadly. *Id.* For example, the letters from [redacted] and [redacted] all describe his research and the creation of an organic gel product, as well as his focus on research into carbon nanotubes, however, none of these letters describe how the products representing his research, testing, and evaluation impact on a national or global scale or have broader implications at a level that is commensurate with national importance. *Id.* We acknowledge that the letter from [redacted] discusses how the organic gel the Petitioner was involved in creating is currently in use; however, the letter's description of the use of the product does not materially, relevantly, or persuasively detail the national or even global impact or broader implications on matters of national importance of the use of the gel. *Id.* Therefore, it does not satisfy the Petitioner's burden. *Id.*

In his RFE response, the Petitioner provided three additional letters. The first is from an assistant department head and professor at [redacted] which opined that the Petitioner's research has been influential and cited by several groups of researchers investigating carbon nanotubes as they relate to enhanced oil recovery techniques. The second is from a professor in the department of petroleum engineering at the [redacted] This letter describes how the Petitioner's "innovative work on developing a novel carbon nanotube system (CNT) to support underground foam injections for enhanced oil recovery operations has garnered considerable attention within the field . . ." and "impacted both the academic and industrial sectors," concluding that his work enhances "national energy security and reinforces the country's position as a global leader in technology and innovation." The final letter is an independent advisory opinion from an assistant professor at [redacted] in Pennsylvania, corroborating that the Petitioner's research into carbon nanotubes has been cited by researchers looking into enhanced oil recovery strategies. While we have considered these letters and acknowledge that the Petitioner is held in high regard by the writers, the letters do not provide sufficient details to understand how the Petitioner's endeavor to research and develop products (such as his organic gel), exert national, or even global impact, or broader implications to such an extent that his endeavor can be considered of national importance. *Id.* In general, these letters would be more relevant to our analysis of *Dhanasar's* second prong, where we examine whether a petitioner is well positioned to advance the endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In analyzing a proposed endeavor's national importance, *Dhanasar* requires us to look beyond the field of endeavor, to examine the specific endeavor the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, while we acknowledge the petroleum industry and its environmental impact are subjects of governmental initiatives to combat climate change, the letters do not establish how his proposed endeavor impacts these matters at a level commensurate with national importance. *Id.* Instead, it appears that any impact that will flow from the Petitioner's proposed endeavor will only extend to employers or entities availing themselves of the Petitioner's services. The Petitioner did not submit any evidence to demonstrate the national, or even global impact of his proposed endeavor beyond the sale of the products he helps develop either with an entity such as his current employer, or his future unrealized entity as described in the statement submitted with his RFE response. *Id.* Moreover, to the extent that the Petitioner intends to start his own business in the future to sell products based on his research, the record does not demonstrate the national or global impact or broader implications of these products. *Id.*

On appeal, the Petitioner asserts that the Director ignored relevant evidence related to his endeavor's national importance. Specifically, he points to statistics regarding carbon emissions, and the importance of carbon nanotube technology and corroborates these assertions with information from entities, such as the United Nations, that are working towards the development of methods to harness cleaner forms of energy. The Petitioner also provided information describing the importance of natural gas, and the use of carbon nanotubes as a possible solution to oil extraction pollution. However, these documents do not specifically discuss or address the Petitioner's proposed endeavor. *Id.* As such, while they provide a context for understanding the Petitioner's assertions, and help establish the substantial merit of his endeavor, the information does not establish the endeavor's national importance. *Id.* Finally, we acknowledge the Petitioner's evidence of his academic activities including his curriculum vitae, educational degrees, google scholar profile, research publications, and citations of his research publications. However, this information is considered as part of our analysis of *Dhanasar's* second prong, where, as stated above, we examine whether a petitioner is well positioned to advance the endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 890.

Additionally, we acknowledge the Petitioner's statement that his employer does not sponsor foreign workers for permanent residence. However, whether this constitutes an impracticality that, on balance of other applicable factors, would support the waiver of the labor certification requirement and thus a job offer is a consideration for our third prong analysis under the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&B Dec. at 891.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because he has not established his eligibility under prong one, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs 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

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

ORDER: The appeal is dismissed.