U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33944809

Date: NOV. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, 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 established that the Petitioner qualified for EB-2 classification as an advanced degree professional, 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 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 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. 8 C.F.R. § 204.5(k)(2). 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. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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,[2] 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

In denying the petition, the Director concluded that the Petitioner qualifies for underlying EB-2 classification as a member of the professions holding an advanced degree but did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner's endeavor did not meet the *Dhanasar* framework's national importance requirement, nor did the Petitioner establish that, on balance, waiving the job offer requirement would benefit the United States.[3] Based on our de novo review of the record, we agree that the Petitioner has not demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* framework.

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.* at 889.

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner listed his occupation as "electrical engineer" and stated that his job title in the proposed employment was "postdoctoral researcher." He provided a statement in which he elaborated that his proposed endeavor will "continue his research on investigating the integration of renewable energy sources into existing energy infrastructure and analyzing the impact of distributed energy resources on power system efficiency and cost-effectiveness in order to enhance the resilience and reliability of the U.S. power grid." The Petitioner asserted that he currently is a doctoral student at a U.S. university and plans to pursue the proposed endeavor "while earning [his] Ph.D. in electrical engineering" in his current university program and then, upon graduation, he intends to continue the proposed endeavor by "pursu[ing] a position as a postdoctoral researcher" at the same U.S. university.

[2] *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 is discretionary in nature).

[3] The Director also found that the Petitioner's proposed endeavor has substantial merit, and that the Petitioner is well-positioned to advance it.

In support of his claim that his research is of national importance, the Petitioner argued that his work would strengthen the resilience of the U.S. power grid. He asserted that 80% of the past power grid failures in the United States were due to weather-related events, which have also caused nearly twice as many power failures, and that power failures are increasing. According to the Petitioner, his research as an electrical engineer "directly addresses these challenges with the incorporation of sustainable energy supplies for increasing accessibility to power and optimizing the efficiency of the electricity network" and that his work is an "integral component in the restructuring of the American power grid." In response to a request for evidence (RFE) that, among other things, his proposed endeavor has national importance, the Petitioner asserted that his proposed endeavor would continue his research to: (1) optimize the integration of various renewable energy sources, such as solar and wind, into the U.S. power grid; (2) dynamically analyze transmission and distribution networks, particularly in asymmetrical configurations with distributed energy resources (DERs), to understand and mitigate challenges posed by high DER penetration in the grid, including voltage stability and power quality issues; and (3) explore the application of novel hybrid DC circuit breakers in distribution systems to improve the protection and reliability of networks incorporating high levels of DC sources and loads, such as those in electric vehicle charging stations and solar PV installations. The Petitioner submitted a letter of recommendation from Dr. S-, his current academic advisor, his resume, academic records, publications he has authored, information about asserted funding sources, and government agency reports and articles. The Director ultimately found that the Petitioner's evidence was not sufficient to establish the national importance of the proposed endeavor because he had not shown implications beyond the university, its clients and employees, or any other individual or entity.

On appeal, the Petitioner first asserts that the Director failed to assess the national importance of the proposed endeavor. The Petitioner contends that he has already submitted sufficient evidence of his eligibility for the national interest waiver, including the national importance of his proposed endeavor, which he claims may help to provide alternative energy during power outages, especially in urban areas of the United States. In support of these arguments, the Petitioner re-states the description of his endeavor and excerpts his previous statements in the record. He also contends that the Director incorrectly evaluated the Petitioner's proposed endeavor and failed to consider all of the relevant evidence, resulting in an abuse of discretion. USCIS may, as matter of discretion, grant a national interest waiver to a Petitioner who meets the eligibility requirements outlined in our precedent decision in *Dhanasar*.[4] According to the *USCIS Policy Manual*, if USCIS denies a request as a matter of discretion, the denial will explain the reasons the request was not granted. 1 *USCIS Policy Manual* E.9(B)(3) https://www.uscis.gov/policy-manual. Contrary to the Petitioner's contentions, the Director's decision in this matter analyzed the Petitioner's eligibility for the requested benefit and provided explanations for the denial.

In determining national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Matter of Dhanasar*, 26 I&N Dec. at 889. To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. We recognize the importance of research on maintaining power grids and note that the Director found the Petitioner's endeavor to have substantial merit. But the relevant question is not the

[4] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar* at 889. 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. Simply conducting research or being employed in an occupation does not constitute an endeavor for the purposes of these proceedings. To the extent his current doctoral research and expressed desire to continue that research constitute an endeavor, the record does not contain sufficient evidence describing the Petitioner's endeavor and its future potential impact. For example, the recommendation letters describe the Petitioner's contributions resulting from his current graduate work developing models for optimizing electrical power grid strategies. The Petitioner's current Ph.D. advisor states that this work "is highly aligned with [the Petitioner's] overall goal of making breakthroughs in renewable energy" and that "[t]he methodology he employed in the project described above is relevant to his efforts pertaining to renewable energy, and the operation of water treatment facilities and power grids have considerable overlap." However, the record does not demonstrate the improvements or advancements they assert come from their research endeavor have national or global impact or broader implications.

The Petitioner further asserts on appeal that the Director improperly replaced consideration of the national importance of the proposed endeavor with consideration of the Petitioner's current work. However, the Petitioner initially asked that his current work be considered as part of the national importance standard, claiming that "the proposed research on investigating the integration of renewable energy sources into existing energy infrastructure in order to enhance the resilience and reliability of the U.S. power grid, *including his research at Louisiana State University*, is therefore also nationally important." (Emphasis added.) In his own statements, the Petitioner emphasized that he intends to continue his current research: (1) while completing his doctoral program; and (2) thereafter at the post-doctoral level at the same university where he is currently studying. Specifically, in response to the RFE, he asserted that he sought to "confirm that his proposed endeavor is a direct continuation of his previous achievements as a researcher." In addition, the letter of support that he provided to establish the national importance of the proposed endeavor also discusses the Petitioner's current work as a graduate student. Therefore, because the Petitioner repeatedly claimed that the proposed endeavor will be a continuation of his current research work at the same institution, he has not shown on appeal that the Director improperly considered evidence of the Petitioner's current work in assessing the national importance of the proposed endeavor.[5] The Petitioner has not established that his proposed work for the university at which he currently studies has broader implications within his field at a level sufficient to establish the national importance of his endeavor. While he asserts that his work is important to the maintenance of the U.S. power grid, he does not sufficiently explain or demonstrate how his future work at the school stands to affect the U.S. power grid. Nor does the record show, for instance, that the specific work the Petitioner proposes to undertake offers original

[5] Although the Petitioner contends that his proposed endeavor involves continuing his post-doctoral research at the same university at which he is currently completing his Ph.D. program, the record here does not show that the university has agreed to employ the Petitioner in the future. Consequently, in any future NIW adjudication where: (1) the Petitioner is required to establish that he is well-positioned to advance the proposed endeavor in accordance with the second prong of *Dhanasar* in order for the NIW petition to be approved; and (2) he expresses his intent to continue the proposed endeavor in this specific manner, then he must establish that he can continue his research at the same university after graduation without employment or funding.

innovations to impact the field nationally, or even globally, or otherwise broadly implicates matters rising to a level of national importance.

Here, the Petitioner has not overcome the Director's conclusion that he did not establish the national importance of the proposed endeavor. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining eligibility requirements for the requested national interest waiver, i.e., whether, on balance, waiving the job offer requirement would benefit the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework by establishing the national importance of the proposed endeavor, 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.