U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34817497

Date: NOV. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 EB-2 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 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.

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. 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. 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 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;

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 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.

At the time of filing, the Petitioner was employed as a professor at [redacted] in Nigeria. Regarding his proposed endeavor, the Petitioner stated that he intended "to continue his research on developing and optimizing nanostructured materials to effectively remove emerging contaminants, microplastics, and radionuclides from water in order to improve water treatment, desalinization, and renewable energy applications." He further indicated that he planned to "develop protocols for the synthesis and characterization of different functionalized, nanostructured semiconducting single and mixed-metal oxide materials for photocatalytic degradation of pollutants, salinity reduction in wastewater, and energy harvesting." The Petitioner also asserts that he "will continue to publish original chemistry research in peer-reviewed journal articles and conference papers." For the reasons discussed below, we conclude the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

We withdraw the Director's determination that the Petitioner did not establish the national importance of his proposed endeavor under *Dhanasar's* first prong. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. As evidence that his proposed research has substantial merit and national importance, the Petitioner presented information about Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), adverse health effects associated with contaminated drinking water, the Safe Water Drinking Act, the U.S. Action Plan on Global Water Security, and water contamination and diseases.[2] He also provided letters of support discussing how his undertaking contributes to advancements in using nanomaterials as absorbents and catalysts for wastewater treatment and contaminant removal. Additionally, the Petitioner submitted documentation indicating that the benefit of his proposed research offers broader implications for the field of chemistry, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, he has established that he meets the first prong of the *Dhanasar* framework.

[2] This information includes articles about U.S. National Institute of Environmental Health Sciences, U.S. Environmental Protection Agency, U.S. Department of State, and Biden-Harris Administration initiatives to protect communities from PFAS contamination and ensure safe drinking water.

B. Well Positioned to Advance the Proposed Endeavor

We also withdraw the Director's conclusion that the Petitioner did not establish he meets *Dhanasar's* second prong. To determine whether an individual is 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. *Dhanasar*, 26 I&N at 890.

The record includes the Petitioner's curriculum vitae, academic records (including his Ph.D. in Chemistry), published and presented work, peer review service, and documentation of numerous articles that cited to his research findings.[3] In addition, the Petitioner offered reference letters describing his expertise in chemistry and his past record of success in his research field. Several expert references identify specific examples of how the Petitioner's research progress in improving wastewater treatment methods has affected his field. As corroborating documentation regarding the significance of his work, the Petitioner provided evidence showing that his published work has been frequently cited by independent researchers, and that the rate at which his work has been cited is high relative to others in the field. His experience and expertise as chemistry researcher, published articles, citation evidence, record of success contributing to various research projects, and progress in his field position him well to advance his proposed endeavor. Accordingly, the Petitioner has demonstrated that he satisfies the second prong of the *Dhanasar* framework.

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

Furthermore, we withdraw the Director's determination that the Petitioner did not establish he meets *Dhanasar's* third prong. This 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. *Id.* at 890.[4] As a scientific researcher, the Petitioner possesses considerable experience and expertise in inorganic chemistry. The record also demonstrates the widespread benefits associated with research progress improving the effectiveness of wastewater treatment methods. In addition, the Petitioner has documented his past successes in advancing research in using nanomaterials as absorbents and catalysts for wastewater treatment and contaminant removal. Based on the Petitioner's track record of successful research and the significance of his proposed work to advance U.S. clean water initiatives, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available. The Petitioner therefore satisfies the third prong of the *Dhanasar* framework.

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[3] "USCIS considers an advanced degree, particularly a Doctor of Philosophy (Ph.D.), in a STEM field tied to the proposed endeavor and related to work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." *See* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual.

[4] When evaluating the third prong, USCIS considers the following combination of facts contained in the record to be a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

See USCIS Policy Manual, *supra*, at F.5(D)(2).

III. CONCLUSION

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

ORDER: The appeal is sustained.