U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34817033

Date: NOV. 26, 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 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 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. 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.[2] The remaining 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.[3]

With respect to his proposed endeavor, the Petitioner asserted that he plans to "continue investigating the topological features of astrophysical magnetic fields in order to provide fundamental insights into physical systems and plasma dynamics with applications in nuclear power, semiconductors, and satellite technology." He further indicated that he intended to "study renormalization group theory as it applies to Lagrangian particle histories and its applications for fluid mechanics, plasma physics, and astrophysics." The record indicates that the Petitioner worked as a post-doctoral researcher at [redacted] after receiving his Ph.D. in 2018.[4] He filed the Form I-140, Immigrant Petition for Alien Workers, in August 2020.

A. Substantial Merit and National Importance of the Proposed Endeavor

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

In his decision denying the petition, the Director determined that the Petitioner had demonstrated both the substantial merit and national importance of his proposed endeavor. The record supports this conclusion. For example, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. Accordingly, we agree with the Director that the Petitioner meets the first prong of the *Dhanasar* framework.

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[2] The record indicates that the Petitioner received a Ph.D. in Physics and Astronomy from [redacted] in 2018.

[3] The Director determined that the Petitioner did not meet the second and third prongs of the *Dhanasar* analytical framework. To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

[4] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer.

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. *Dhanasar*, 26 I&N Dec. at 890.

The record includes documentation of the Petitioner's curriculum vitae, Ph.D. degree, published and presented work, peer review service, and August 4, 2020 postdoctoral fellowship appointment letter offering him a position at [redacted]. The Petitioner also offered evidence of articles that cited to his published work, citation metrics, and letters of support discussing his graduate and postdoctoral research under the guidance of Dr. [redacted], research professor at [redacted] and the Petitioner's Ph.D. advisor,[5] and Dr. [redacted], a professor of applied mathematics and statistics at [redacted].

We will adopt and affirm the Director's determination that the Petitioner did not demonstrate he is well positioned to advance the proposed endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Prado-Gonzalez v. INS,* 75 F.3d 631, 632 (11th Cir. 1996) (joining "every court of appeals that has considered this issue" holding that an appellate body may affirm the lower court's decision for the reasons set forth therein); *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Gomez-Mejia v. INS,* 56 F.3d 700, 702 (5th Cir. 1995).

The Director's decision gave individualized consideration to the evidence the Petitioner submitted with the initial petition and in response to the Director's request for evidence (RFE).[6] We agree with the Director's well-reasoned decision that the Petitioner does not qualify for a national interest waiver. As the Director correctly concluded, the evidence in the record did not sufficiently demonstrate whether the Petitioner's progress towards achieving the goals of the proposed research, his record of success in similar efforts, or generation of interest among relevant parties supported his positioning to advance the proposed endeavor.

The Petitioner contends on appeal that the Director did not properly evaluate evidence in the record, and that this evidence establishes he is well positioned to advance the proposed endeavor. The Petitioner further contends that the Director did not properly analyze his published and presented work, citation evidence, letters of support, education, and peer review service.

Additionally, the Petitioner argues that the Director erred in not considering evidence that post-dates the filing of the petition. Eligibility, however, must be established at the time of filing. The regulation at 8 C.F.R. § 103.2(b)(1) states that a petitioner must establish that they are "eligible for the requested benefit at the time of filing the benefit request." In addition, the regulation at 8 C.F.R. § 103.2(b)(12)

[5] The Petitioner's four most-cited research articles were coauthored with Dr. [redacted]

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

provides that "[a] benefit request shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the benefit request was filed." *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The Petitioner asserts that the text of *Dhanasar* requires USCIS "to look forward into the future" to evaluate if they are well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. A proposed endeavor's potential prospective, or future impact is a consideration under *Dhanasar's* first prong, not the second prong at issue here. *See Dhanasar*, 26 I&N Dec. at 889. The second prong of *Dhanasar* shifts the focus from the proposed endeavor to a petitioner's qualifications rendering them well positioned to advance the prospective proposed endeavor. *Id.* at 890. The Petitioner must establish his eligibility under these factors contained in *Dhanasar's* second prong including but not limited to: the individual's 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 at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor under the second prong of the *Dhanasar* analytical framework.

In letters supporting the petition, the Petitioner's references discussed his research projects at [redacted] involving stochastic magnetic reconnection in plasmas. The Director's decision provided a thorough discussion of these letters of support. The Petitioner asserts on appeal that the Director decision disregarded information in the letter from Dr. [redacted] professor at the [redacted] who stated:

> [The Petitioner] offered a theoretical perspective that is important to the study of jet formations. Based on current theories of jet formation, [the Petitioner] found that cataclysmic variables should be unlikely to launch astrophysical jets. Yet, recent observations found that cataclysmic variables do indeed launch jets. Therefore, [the Petitioner's] perspective is vital because it challenges current theories of jet formation. We thus highlighted his research and reiterated his argument that established theories must be revised to accommodate recent observations regarding cataclysmic variables.

While the Petitioner's work involving cataclysmic variables and jet formations has contributed knowledge to an active field of research, he has not sufficiently demonstrated that his findings constitute a record of success or progress rendering him well positioned to advance his proposed endeavor.

The Petitioner also points to a letter from Dr. [redacted] professor at [redacted] who indicated that the Petitioner "and his colleagues . . . outlined important advancements in turbulent plasmas in astrophysics and laboratory plasmas." Dr. [redacted] further stated that "[t]heir line of research is

notable for introducing novel concepts like stochastic flux freezing while challenging classical studies like the Alfven theorem in magnetohydrodynamics," but the Petitioner has not shown that his work shows success or progress at a level that renders him well positioned to advance his proposed endeavor.

In addition, the Petitioner mentions a letter from Dr [redacted], an astrophysicist at [redacted] who stated that the Petitioner developed "a statistical formalism to analyze random behavior of magnetic fields and fluid motions in astrophysical environments. This research is notable because astrophysical magnetic fields are known for their complexity, for example, due to turbulence which is ubiquitous in astrophysics." While Dr. [redacted] describes the Petitioner's work as notable, the Petitioner has not shown that his level of research success is sufficient to demonstrate he is well positioned.

The Petitioner contends that his coauthored research articles were "featured in top journals in the field" such as *Astrophysical Journal*, *Physics of Plasmas*, *Journal of Applied Physics*, *Journal of Mathematical Physics*, and *Physical Review E*. That a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in their field.

As it relates to the citation of the Petitioner's work, the Petitioner provided his Google Scholar profile from August 2020. The August 2020 information from Google Scholar indicates that his four highest cited articles, entitled [redacted] (2020), [redacted] (2018), [redacted] (2018), and [redacted] (2019) each received 19, 15, 14, and 13 citations, respectively.[7] The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors. In response to the Director's RFE, the Petitioner provided a December 2023 Google Scholar profile listing additional citations his published articles received that post-date the August 12, 2020 filing of the petition.[8] These later citations provided in response to the RFE do not establish his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

The Petitioner also provided January 2020 data from Clarivate Analytics (InCites Essential Science Indicators) regarding baseline citation rates and percentiles by year of publication for the physics research field. The Petitioner contends on appeal that his highest cited paper (coauthored with Dr. [redacted] Dr. [redacted] and four others and published in 2020), entitled [redacted] ranked "among the top 0.01% of the most-cited papers in Physics in 2020." The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. In addition, because the Petitioner has not shown that the January 2020 Clarivate Analytics data is contemporaneous with the Petitioner's August 2020 Google Scholar information, he has demonstrated that the former provides a proper analysis of his citation record.[9]

[7] None of the Petitioner's remaining articles were cited to more than eight times as of August 2020.

[8] For example, the citation counts for his four highest cited articles as of December 2023 had increased to 147, 19, 17, and 16 citations. None of the Petitioner's remaining articles were cited to more than ten times as of December 2023.

[9] A January 10, 2020 webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Regardless, the Petitioner has not established that his co-authorship of one highly cited paper with his research supervisors automatically demonstrates his record of research success or otherwise renders him well positioned.

Additionally, the Petitioner presented an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with respect to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation."

Furthermore, the Petitioner's RFE response included OpenAlex author metrics which he claims compares his citation impact to that of other physics researchers. This information lists the "Years Covered" as "2013-2023" and "Date of Collection" as "2022-05-01" and therefore it does not establish the Petitioner's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12). Moreover, regarding the Petitioner's citation metrics from both OpenAlex and Clarivate Analytics, he relies on citation information concerning the larger field of physics and compares his citation frequency in theoretical physics to that of the larger field. While the Petitioner correctly points out that theoretical physics is part of the larger field of physics, he did not submit sufficient evidence confirming that information extrapolated from the larger field applies equally to each subfield within physics, including theoretical physics.[10] Thus, the Petitioner's comparison of his Google Scholar citation data in his field with information regarding citation in the larger field of physics does not sufficiently establish the level of his impact or research success in the field of theoretical physics.

Regardless, citation frequency which is quantitative in nature does not reveal the reasons for the citations, which involve a qualitative analysis. In other words, a high citation number might show that others in the field have noticed the Petitioner's work, but it does not confirm that his work has impacted or advanced the field of theoretical physis in such a way that renders him well positioned. Further, the Petitioner has not demonstrated that the number of citations received by his published articles at the time of filing reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong.

[10] The appellate submission includes "Scope Notes" from Clarivate Analytics stating: "Physics includes journals covering articles from all areas of physics and the following subfields: mathematical physics, particle nuclear physics, physics of fluids and plasmas, quantum physics, theoretical physics, chemical physics, applied physics, condensed matter physics, physics of materials, and optics and acoustics."

The Petitioner argues on appeal that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

Moreover, as it relates to the Petitioner's education, while his Ph.D. degree 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.[11] 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.

Regarding the Petitioner's plan for future activities, he stated:

> I am currently in the job market and searching for an academic position in the U.S. . . . I have continued to conduct research as a postdoctoral fellow and also supervise undergraduate and graduate students, publishing original research papers in top ranking journals. Thus, I have high prospects for getting hired as a professor/lecturer. I have already applied for several such positions. The hiring process in academia usually takes place in the late fall/early winter and I hope I will soon hear from some of my job applications which are still under review.
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> An example of my job applications, currently under review, is the tenure-track position at the Assistant Professor rank in Theoretical Astrophysics at the Department of Physics, [redacted]. . . . All in all, this position at the Physics Department at [redacted] is ideal to advance my proposed endeavor due to the department's focus on at least two major research areas of physics in both of which I am an expert.

With respect to the Petitioner obtaining a future professor/lecturer position at a U.S. university or research institution, he did not provide documentation from any such organization showing their communications or identifying the specific research projects he intends to pursue on the organization's

[11] "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. competitive or national security, an especially positive factor to be considered along with other evidence for purposes of the assessment under the second prong." *See generally* 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual. A degree in and of itself, however, is not the only factor we consider in determining if a person is well positioned to advance their proposed endeavor. *Id.*

behalf. 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.[12]

Regarding his peer review activity, the Petitioner provided letters of support indicating that he reviewed papers for the Midwest Magnetic Fields Workshop, journals of the American Astronomical Society, and *Physics of Plasmas*. The Petitioner, however, has not demonstrated that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and postdoctoral training, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his graduate and postdoctoral work constitutes a record of success or progress in theoretical physics research rendering him well positioned to advance his proposed endeavor. As the Petitioner has not demonstrated that is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

III. CONCLUSION

Because the documentation in the record does not establish that 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. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. *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).

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established 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, with each considered as an independent and alternate basis for the decision.

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[12] For example, the Petitioner did not offer evidence showing that he has received funding for his research proposals or future projects. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Regarding his work at [redacted] the record does not show that the Petitioner (rather than Dr. [redacted] or Dr. [redacted]) was mainly responsible for obtaining funding for their research projects.

ORDER: The appeal is dismissed.