U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34873449

Date: NOV. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer science researcher, 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 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 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.*

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors 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.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[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).

considered must, taken together, indicate 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.[2]

II. ANALYSIS

The Director found that the Petitoner qualifies as a member of the professions holding an advanced degree.[3] 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 Ph.D. student at [redacted].[4] For the reasons discussed below, we find 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

The Petitioner indicated that his proposed endeavor is to, "improve the productivity, reliability, and cost-effectiveness of stream processing, big data systems, and machine learning systems in order to advance the performance, scalability, and efficiency of these systems in medicine, finance, transportation, and national security. To progress this endeavor, [he] will utilize [his] extensive experience with algorithm development, system performance analysis, distributed systems, and stream processing." The Petitioner indicated that he will "continue pursuing [his] proposed endeavor while earning [his] PhD in computer science from [redacted]. In a statement in response to the Director's request for evidence, the Petitioner expounded on his endeavor, stating that, among other things, he planned to "develop novel algorithms and frameworks that optimize resource allocation and reduce the energy consumption of stream processing systems." He further indicated that "[a]nother major focus of [his] research will be on designing systems that enable efficient collaborative machine learning and data analysis while ensuring data privacy."

The record contains letters of support from the Petitioner's colleagues describing the benefits associated with aspects of his research. For example, one reference stated that the Petitioner "developed a client selection algorithm that significantly speeds up the training time for federated learning (FL) techniques using real-world data sets, overcoming both statistical and system heterogeneity to allow for faster training of machine learning models using large amounts of data," and indicated that this project has seen "significant recognition by several independent research teams in the field." Another reference indicated that without the Petitioner's "research on benchmarking and evaluating stream state stores," their project would not have been possible.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The aforementioned letters of support also discuss how the Petitioner's proposed work stands to advance data streaming technology, and that as Dr. [redacted] an assistant professor at the [redacted] in Sweden noted, "[c]loud-based data streaming services are a vital component of the operation of many American businesses

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] The Petitioner received a Master of Science degree in computer science from [redacted] in 2021.
[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.

and industries that form the backbone of the country's economy," and as such, "the mitigation of . . . inefficiencies is essential," concluding that the Petitioner's research is "necessary." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed work has broader implications for the field, as the results are disseminated to others in the field through computer science conferences and publications. In his response to the Director's RFE, the Petitioner provided documentation that the number of citations from his publications had increased from 50 to 69 between the filing of his petition and his response to the RFE, and also included a map, indicating that his publications had been cited by those from across the United States, as well as in countries around the world. Further, as asserted on appeal, the Petitioner's field is included as part of the Critical and Emerging Technologies List issued by the National Science and Technology Council. As the Petitioner has documented both the substantial merit and national importance of his proposed endeavor, we conclude that he meets the first prong of the *Dhanasar* framework.[5]

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

As explained above, the third prong requires the 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. As a researcher, the Petitioner possesses considerable experience and expertise in computer science. The record also demonstrates the widespread benefits associated with research progress towards improving streaming systems and machine learning. In addition, the Petitioner has documented his past successes in advancing computer science research and developing effective methodologies. Based on the Petitioner's track record of successful research and development work and the significance of that work to advance U.S. computer science interests, we find 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.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find 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.

[5] The Director's decision concluded that the Petitioner had established that he was well positioned to advance his proposed endeavor, and as we concur, we need not further address the matter here. He has established that he meets the second prong of the *Dhanasar* framework.