U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33349137

Date: OCT. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the field of electrical and computer engineering, 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 Petitioner's Form I-140, Immigrant Petition for Alien Workers, concluding that the Petitioner established his underlying eligibility for EB-2 classification as an advanced degree professional, but that he did not establish he merited a national interest waiver. 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. 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.

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,[1] 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. NATIONAL INTEREST WAIVER

The Petitioner possesses a master's degree in electrical engineering. Based on this, the Director determined that the Petitioner is an advanced degree professional and therefore qualifies for the underlying EB-2 visa classification. Thus, the remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver.

The Petitioner is a graduate research assistant and doctoral candidate in the field of electrical and computer engineering who seeks to continue his research while earning his doctorate. The Director concluded that the Petitioner's proposed endeavor had substantial merit. We agree. However, the Director also concluded that the Petitioner had not established the remaining criteria under the *Dhanasar* analytical framework, namely that his proposed endeavor was nationally important, that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. *Id.*

On appeal, the Petitioner claims the Director failed to include a discretionary analysis in addition to its substantive analysis on the Petitioner's eligibility for the national interest waiver. The agency policy the Petitioner references, however, relates to benefit requests where an officer has determined a petitioner has met all applicable threshold eligibility requirements. Here the Director concluded that the Petitioner had not met the three *Dhanasar* prongs which are threshold requirements to establish eligibility for a national interest waiver. As a result, neither the law nor policy required the Director to perform a separate discretionary analysis as the Petitioner proposes.

The Petitioner also claims that the Director misinterpreted the proposed endeavor by characterizing him as a "Researcher in the field of Electrical Power Engineering." The Petitioner, however, does not specify how this purported misinterpretation affected the Director's reasoning and overall decision. Moreover, the record indicates counsel for the Petitioner, in legal briefs before the Director and on appeal, specifically asserted that the Petitioner is an expert in the field of "electrical power engineering" who endeavors to continue his research, and thus we find that the characterization used by the Director does not materially misinterpret the proposed endeavor.

Finally, the Petitioner claims the Director erred in its conclusion, and that he meets all three of the *Dhanasar* prongs and merits a national interest waiver.

[1] *See Brasil v. Sec'y of DHS*, 28 F.4th 1189, 1194 (11th Cir. 2022) (concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

A. Substantial Merit and National Importance

The first prong of the *Dhansar* framework, relating to substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Id.* The endeavor's merit may be demonstrated in areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact, and "look for broader implications." For instance, we noted in *Dhanasar* that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Further, "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

As noted above, the Petitioner is a graduate research assistant and doctoral candidate in the field of electrical and computer engineering who proposes to continue his research while earning his doctorate and later as a postdoctoral researcher. He states that he specifically seeks to research the development of advanced integration methods for embedded, intelligent multi-microgrid systems for identifying optimal control and security strategies to ensure more resilient and reliable power systems (hereafter referred to as "power systems"). He plans to publish and present the results of his research in journals and at conferences and through filing patents. He asserts his research is nationally important as it will be used to enhance the reliability, efficiency, and security of power systems across the United States.

We note that the Petitioner specifically asserts on appeal that the Director erred in determining that his proposed endeavor was not nationally important solely because he had not established it had significant potential to employ U.S. workers or had other substantial positive economic effects, particularly in an economically depressed area. We agree that these are not the only factors that may establish the national importance of a proposed endeavor.

The record contains letters of support from professors holding positions in academia that discuss the Petitioner's research and how it relates to U.S. strategic interests and benefits the field of electrical and computer engineering. In addition, the Petitioner has submitted evidence indicating that the benefit of his continued research will have broader implications for the field, as the results will be disseminated to others in the field through additional peer-reviewed publications and presentations at conferences.

Therefore, the record demonstrates that the Petitioner's proposed endeavor is of national importance. As the Petitioner has established both the substantial merit and national importance of his proposed endeavor, we find that he meets the first prong of the *Dhanasar* framework and withdraw the Director's determination as to this criterion.

B. Well Positioned to Advance the Proposed Endeavor

The second prong of the *Dhanasar* framework shifts the focus from the proposed endeavor to the Petitioner. To determine whether the Petitioner 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. *Id.* at 890.

The record includes the Petitioner's curriculum vitae, academic records, what appears to be a cover letter for a patent application, several publications and related citation records, and evidence the Petitioner has conducted peer review activities. In addition, the Petitioner offered letters from experts in the Petitioner's field describing his experience in performing research and other accomplishments. The Petitioner also submitted evidence of his plans for long-term employment in the United States including job offers from and multiple communications with private industry and academic institutions. He claims that in any of these positions he would be able to continue his proposed endeavor researching power systems.

We acknowledge the Petitioner's education, including his master's degree in electrical engineering and doctoral candidacy in electrical and computer engineering. Although the Petitioner's advanced degree in a STEM field is an especially positive factor, it is not a sufficient basis to determine that he is well positioned to advance the proposed endeavor. *See 6 USCIS Policy Manual* F.5(D)(2), https://www.uscis .gov/policymanual. Rather, we look to a variety of factors and education is merely one among many that may contribute to such a determination.

The Petitioner also relies, in part, on his three peer reviewed journal articles and 11 conference publications. The Petitioner highlights his 92 citations including ten articles with enough citations to place "in at least the top 20% most cited papers for the field any year in which they were published." The percentiles claimed by the Petitioner come from Clarivate Analytics which provides baseline citation rates and percentiles by year of publication for different research fields. Clarivate Analytics cautions, however, that its "[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." Furthermore, the citation information concerns the larger field of engineering and compares his citation frequency in electrical and computer engineering to that of the larger field. While electrical and computer engineering is part of the field of engineering, the Petitioner does not submit sufficient evidence confirming that information extrapolated from the larger field applies equally to each subfield within engineering, including electrical and computer engineering. Moreover, citation frequency, which may include self-citations, is quantitative in nature and does not reveal the reasons for the citations, which involve a qualitative analysis.

Regardless, the Petitioner has not established that the number of citations is sufficient to meet *Dhanasar*'s second prong. For instance, although we listed Dr. Dhanasar's "publications and other published materials that cite to his work" among the documents he presented, our determination that he was well positioned was not based on his citation record. Rather, we based it on "[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 and funding from government entities." *Matter of Dhanasar* at 893.

In addition, the Petitioner references the receipt of funding from U.S. agencies and a patent. The Petitioner's advisor states the Petitioner supported his research group in seeking and receiving external funding in 2022. The Petitioner also contends that he has been targeting certain government agencies with proposals to continue his research. However, he does not offer evidence showing that he has

been the recipient of any scientific research grants. 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. Here, the record does not show that the Petitioner, as opposed to the University or his advisor for example, has received funding for his research proposals or future projects. As to the patent, the record is limited to a cover letter listing a purported patent number and showing the patent was "filed," along with an abstract that appears to form the basis for the patent application. The Petitioner has not, however, provided evidence that the patent has been approved or documentation that demonstrates its significance to the field.

Regarding his peer review activity, the Petitioner provided printouts and emails showing the number of articles he has reviewed in 2022 and 2023. But the Petitioner has not established the significance of his review experience nor does the record show that the Petitioner's 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.

We would also note concerns regarding the Petitioner's plan for future activities. While a letter from the Petitioner's advisor informally states that he will offer the Petitioner a research position upon his graduation, the record also shows that the Petitioner is considering a variety of other positions, including positions at other academic institutions and private employers in the United States. And while the Petitioner claims that he would continue his research in any of those other positions, the record does not contain documentation from these organizations identifying the specific projects he intends to pursue on their behalf or showing that the positions would involve or allow for a continuation of his stated proposed endeavor. As the Petitioner emphasized on appeal, his specific endeavor is not just as a researcher in the field of electrical and computer engineering, but rather "to develop advanced integration methods for identifying optimal control and security strategies to ensure more resilient and reliable power systems." The evidence of his varying future employment plans undermines the Petitioner's claims that he is well positioned to advance his stated endeavor.

Finally, the record demonstrates that the Petitioner has conducted and published research, 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 in order 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 must 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. After considering the Petitioner's education, skills, knowledge and record of success in related or similar efforts; plan for future activities; progress towards achieving his proposed endeavor; and interest from relevant entities or individuals, the record is insufficient to establish he is well positioned to advance his proposed endeavor. The Petitioner therefore has not established that he satisfies the second prong of the *Dhanasar* analytical framework.

III. CONCLUSION

Although the record supports the Petitioner's assertions that he satisfied prong one of the *Dhanasar* analytical framework, he has not overcome the Director's finding that he did not satisfy the requisite second prong requiring that he demonstrate he is well positioned to advance his proposed endeavor. He therefore has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

As noted above, the Director also concluded that the Petitioner did not establish 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 is required under prong three of the *Dhanasar* analytical framework. While the Petitioner also contests this conclusion on appeal, since our determination that the Petitioner did not establish that he is well established to advance his proposed endeavor is dispositive of his appeal, we decline to reach and hereby reserve the appellate argument on that issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

ORDER: The appeal is dismissed.