U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33944442

Date: OCT. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a biomedical researcher, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional as well as a national interest waiver of the job offer requirement attached to this classification. 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 the Petitioner did not establish eligibility for 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director determined that the Petitioner qualified for classification as an advanced degree professional, that the proposed endeavor has substantial merit, and that the Petitioner is well-positioned to advance her proposed endeavor. However, the Director concluded that the Petitioner did not establish that the proposed endeavor has national importance or that waiving the job offer requirement would benefit the United States.

A. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. 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. 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. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

The record reflects that the Petitioner is a doctoral research fellow at the [redacted] studying biomedical sciences and microbiology and conducting biomedical research in support of eventual advances in the treatment and prevention of Type 1 diabetes. The Petitioner asserts that her proposed endeavor is to investigate the roles that environmental and genetic factors play on the development of Type 1 Diabetes in order to gain insight into the initiating processes of Type 1 Diabetes and the modifying factors involved which can lead to the development of new therapeutics to treat the disease.

The Director determined that while the Petitioner established that the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance because the record did not show the prospective impact of her research beyond her university.

On appeal, the Petitioner asserts that she provided a comprehensive description of her proposed endeavor, namely scientific research which has the potential to have broad implications in the field of diabetes and personalized medicine. For the reasons discussed below, we conclude that the Petitioner has established the national importance of her endeavor under the analytical framework set forth in Dhanasar.

In her submission, the petitioner states that she plans to "conduct a comprehensive study that investigates the intricate relationship between environmental and genetic factors in Type 1 Diabetes." She further describes her research as follows:

> By analyzing a diverse population of individuals with TID and comparing them to healthy controls, we can pinpoint specific environmental exposures and genetic variations that contribute to the disease's development. Through advanced genomic techniques, such as

whole-genome sequencing and gene expression profiling, we can identify genetic risk variants and how they interact with environmental triggers. By combining epidemiological data with cutting-edge genetic analyses, we can uncover new insights into the mechanisms underlying TID pathogenesis. Ultimately, this research can pave the way for personalized preventive strategies and more targeted treatments for individuals at high risk of developing TID. By understanding the intricate interplay between environmental and genetic factors, we can work towards improving the lives of those affected by this challenging condition.

She also highlights that her endeavor aligns with several government initiatives and policies, including the National Institutes of Health's (NIH) allocation of substantial funding to biomedical research, including studies dedicated to Type 1 Diabetes; the establishment of the National Institute of Diabetes and Digestive and Kidney Diseases by the NIH, a dedicated institute to address diabetes and its profound implications for public health; and government participation in public-private partnerships focused on Type 1 Diabetes, such as the Diabetes Association and Beyond TID.

After reviewing the Petitioner's submission, we find that the Petitioner has established that her endeavor – research aimed at developing new treatments for diabetes which utilizes critical and emerging biotechnologies – is the subject of national priorities and has a potential for positive prospective impact, national or global implications to the field, and therefore, rises to a level of national importance.

B. Whether the Petitioner Is Well-Positioned to Advance the Proposed Endeavor

Although the Director concluded that the Petitioner is well-positioned to advance their proposed endeavor, in addressing this prong of the framework under Matter of Dhanasar, the Director's decision lists the potential factors to be considered but does not apply any factors to the Petitioner's evidence or explain why the evidence was sufficient to establish eligibility under this prong. Specifically, the Director provided a summary of the criteria required to meet the second prong of the framework under Matter of Dhanasar, then provided a brief description of the Petitioner's doctoral research as well as a list of the evidence submited by the Petitioner. The Director immediately followed this with a conclusion, "[u]pon further consideration, of the evidence in the record and the evidence received in the RFE, the petitioner has submitted sufficient documentation, that she is well positioned to continue her research as indicated in her proposed endeavor. As such, the petitioner has established she is well positioned to advance the proposed endeavor." Here, the Director did not adequately explain how the evidence in the record led to the determination that the Petitioner established that she is well-positioned to advance her proposed endeavor. However, the Director must explain in writing the specific reasons for the decision.[2] C.F.R. § 103.3(a)(l)(i).

[2] We note here that while the record demonstrates that the Petitioner has conducted, published, and presented research during her graduate studies, the evidence submitted does not appear to demonstrate that this work renders her well positioned to advance her proposed research. 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; however, 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. For instance, does the record demonstrate that the Petitioner's

C. Whether, on Balance, Waiving the Job Offer Requirement Would Benefit the United States

As to the third prong of Dhanasar, the Director concluded that "the record does not demonstrate the widespread benefits associated with the beneficiary's endeavor as a graduate assistant. The evidence fails to detail how the petitioner's proposed endeavor would achieve economic benefit to the Unted States." However, the Director did not discuss the evidence that was considered in balancing these considerations nor address the Petitioner's specific claims as to the third prong. In addition, "[e]vidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." Matter of Dhanasar at 889.

III. CONCLUSION

We will withdraw the Director's decision and remand the matter for further consideration. On remand, the Director should review and fully analyze the entire record in considering whether the Petitioner has established eligibility under the second and third prong of the Dhanasar framework. If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

published and presented work has served as an impetus for progress in diabetes prevention/treatment or that it has generated substantial positive discourse in the diabetes research community or constitute a record of success or progress in advancing research relating to diabetes treatment. Additionally, while acknowledging that the Petitioner may have conducted research in the past, and has three citations over four papers, the sole paper that relates to diabetes has no citations which indicates that the Petitioner's work has not garnered the interest of others. Further, while the record indicates that the Petitioner works on funded projects, she does not offer evidence showing that she 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.