U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33379218

Date: OCT. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an assistant professor and researcher in finance and economics, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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 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. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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), 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.

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.

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. Id. at 890.

The third 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, 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. Id. at 890-91.

II. ANALYSIS

The Petitioner's endeavor is to continue his career teaching in a University in the United States and pursue research to develop machine learning techniques for application to finance to enhance return prediction, discover new risk factors, and explore the effect of corporation innovation activities on stock returns.

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] 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.

[1] See also 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 to be discretionary in nature).

[2] The Petitioner received a PhD. in economics from [redacted] in 2015.

For the first prong of the Dhanasar framework, the Director determined that the Petitioner's proposed endeavor as described above has substantial merit and is of national importance. Upon review of the record, we agree that the Petitioner has established that he meets the first prong of the Dhanasar framework.

The Petitioner challenges the Director's findings on whether he is well-positioned to advance the proposed endeavor and whether on balance, waiving the job offer requirement would benefit the United States. Upon review, we agree with the Petitioner, and we will sustain the appeal.

A. Well-Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to, 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 Director determined that, after consideration of these factors, the evidence submitted did not establish that the Petitioner meets *Dhanasar's* second prong. Upon de novo review, we conclude that the Petitioner has established by a preponderance of the evidence that he is well-positioned to advance his proposed endeavor.

On appeal, the Petitioner contends that the Director applied the wrong standard of proof and the evidence, if considered under a preponderance standard, does establish the Petitioner is well-positioned to advance his proposed endeavor. Specifically, the Director placed little weight on numerous testimonial letters with the observation that the letters do not provide specific examples of the Petitioner's influence on the field "beyond adding to the general pool of knowledge." The Petitioner aptly points out that we previously rejected the "influence" standard, Dhanasar, 26 I&N Dec. at 887-888 and at footnote 6.

The Petitioner's Ph.D. and area of expertise in economics is econometrics, mathematical modeling related to economics, and his endeavor is interdisciplinary applying machine learning computer programming to finance and econometric forecasting.[3] The record includes the following: the Petitioner's curriculum vitae; academic records and awards; published and presented work; documentation regarding the Petitioner's peer review activity; articles citing to the Petitioner's research findings; recommendation letters from numerous academic research colleagues around the world with whom the Petitioner has collaborated; recommendations from academics familiar with the Petitioner's work; a letter of interest in hiring the Petitioner from an American university subject to the Petitioner securing permanent residence; and, information relating to public funding of projects the Petitioner co-authored. The record also shows that the Petitioner teaches courses in introduction to probability and statistics (to undergraduates), empirical asset pricing (to Ph.D. and master's students), and advanced macroeconomics (to Ph.D. students).

[3] For purposes of assessment under the second prong, USCIS considers an advanced degree in the fields of science, technology, engineering, and mathematics (STEM), which is tied to the proposed endeavor and related to work furthering a STEM area important to U.S. competitiveness or national security, an especially positive factor to be considered along with other evidence. See generally 6 USC1S Policy Manual, F.5(D)(2), https://www.uscis.gov/policymanual.

The recommendation letters from fellow academics describe, in meaningful detail, their research expertise and the significance and influence of the Petitioner's research related to consumer behavior and the risks of underusing protective investment strategies. A distinguished professor at [redacted] praised the Petitioner's research stating that when compared to other methodologies, the Petitioner's test for asymmetric dependence between stock market return and the market "consistently exhibited superior power to reject asymmetries." At the 2021 [redacted] Conference, the Petitioner won the [redacted] Best Paper Award.[4] In addition, the letters provide specific detailed examples of how the Petitioner's research findings directly impacted their own and others' research with econometrics, forecasting, and risk. The record shows the Petitioner's research has garnered recognition through its citation by independent, reputable national and international researchers, and that the rate at which his published work has been cited is comparable relative to the citation rate of articles in this discipline. The record shows that a university professor in New Zealand requested the Petitioner's software programs so that the colleague could implement the Petitioner's bias-adjusted estimator in his own research.

In considering the totality of the evidence, the Petitioner has demonstrated that his education, experience, and accomplishments in his economics and finance field, the significance of his role and background in conducting his research, and his current employment as a teacher and researcher are relevant, probative, and material proof of being well-positioned to advance the proposed endeavor. As we stated in Dhanasar, "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." Id. at 892. We must consider the totality of the circumstances and whether the record as a whole demonstrates that the Petitioner is well positioned to advance the proposed endeavor. See generally 6 USCIS Policy Manual, F.5(D)(1), https://www.uscis.gov/policymanual. Considering the totality of this evidence and its support of the nonexclusive second prong factors provided in Dhanasar, we conclude that the Petitioner has established by a preponderance of the evidence that he is well-positioned to advance his proposed endeavor.

Accordingly, we withdraw the Director's determination as to the second prong of the Dhanasar framework and conclude that the Petitioner has satisfied this requirement.

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

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

[4] According to the [redacted] website, the society is a global network of academics and practitioners dedicated to sharing research and ideas in financial econometrics. It is an independent non-profit membership organization, currently housed at [redacted] promotes and expands research and education by organizing and sponsoring conferences, programs, and activities at the intersection of finance and econometrics, including links to macroeconomic fundamentals. The annual [redacted] conference is the largest conference in financial econometrics with a competitive selection process.

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) 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. Id. at 890-91.

The Director determined that the Petitioner had not satisfied the third prong of the Dhanasar framework. Upon de novo review, we conclude that the waiver of the labor certification requirement for the Petitioner would, on balance, be beneficial to the United States.

USCIS considers the following combination of facts contained in the record to be strong positive factors: possession of an advanced STEM degree in his field of endeavor; his published research and peer review of his work; his knowledge and skills in his proposed endeavor; a plan with progress to further his proposed STEM endeavor; and the interest and support of national academic members in his field. The Petitioner possesses considerable education, experience, and expertise in the analysis of finance and economics to continue his research developing machine learning techniques for application to finance to enhance return prediction, discover new risk factors, and explore the effect of corporation innovation activities on stock returns. Based on the foregoing, the Petitioner has established he offers contributions of such value that, on balance, he would benefit the United States even if other qualified U.S. workers are available. The Petitioner, therefore, meets the third prong of the Dhanasar framework. Accordingly, we hereby withdraw the Director's decision otherwise.

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.