U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33348969

Date: OCT. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an inorganic chemist, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but did not establish 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 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

In her statement, "Proposed Endeavor & Future Plans in the Field," the Petitioner described her proposed endeavor as developing and using "metal-organic framework composites and synthesize coordination polymer nanoparticles, polyclusters, and metal complexes in order to confront major environmental and health challenges that include reducing CO_2 emissions, storing renewable solar energy, and combatting cancer." The Petitioner states she intends to pursue a position as a postdoctoral researcher in the United States and would like to work at the University of North Texas Health Science Center.

In response to the Director's request for evidence (RFE), the Petitioner submitted a letter clarifying that she intends to "synthesize new molecules from the family of metal complexes, coordinated polymer nanoparticles, and poly clusters with outstanding properties for cancer treatment" and "develop the application of Metal-Organic Frameworks (MOF) composites capable of reducing CO_2 present in the air" and "store renewable solar energy in molecules resulting from CO_2 reduction."

The Petitioner submitted evidence that she holds the equivalent of a United States doctoral degree in inorganic chemistry. The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether she qualifies for and merits a waiver of the job offer requirement in the national interest.

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. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The Director determined the Petitioner established the substantial merit of her proposed endeavor. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director concluded the Petitioner established the national importance of her proposed endeavor. We agree.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether individuals are well positioned to advance their proposed endeavors, 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 Director determined the Petitioner was not well positioned to advance her proposed endeavor.

The Petitioner has a doctoral degree in inorganic chemistry, engaged in post-doctoral research, and published 10 articles that she co-authored, which have been cited extensively by independent researchers in her field. The Director acknowledged the Petitioner's education and citations to her work, but concluded this evidence was insufficient because there was no evidence the Petitioner's proposed endeavor had generated interest among relevant parties in her field, particularly in the United States. On appeal, the Petitioner asserts the Director did not consider the letters from experts in her field detailing how they have implemented the Petitioner's research in their own work. De novo review shows the Director erred in their assessment of the relevant evidence.

The Petitioner submitted letters from scientists in her field in the United States and other countries attesting to the Petitioner's achievements, record of success and their interest in her work. For example, S-K-[2], Professor of Organic Chemistry at the [redacted] states the Petitioner's research "provides significant insight into metal complexes and their anticancer effects as a therapeutic solution for cancer." Professor S-K- explained the Petitioner "showed the efficiency of using metal complexes to target vital biological sites in cancer cells, showcasing how anticancer drugs and treatments are able to integrate metal complexes as a novel way to treat cancer." Professor S-K- explains the Petitioner's research is "critical to the areas like cancer research, pharmaceutical development, and medical treatment utilization."

H-K-, Professor of Chemistry at the [redacted] also praises the Petitioner's research on metal complexes and explains her findings "are vital to not only understanding the mechanisms of cancer cells, but also for the discovery of improved cancer treatments." Professor H-K- states the Petitioner's research "advances a unique solution to treat cancer" and her findings "indicate that metal complexes are effective in targeting key biological locations in cancer cells and inhibiting their growth."

M-O-, Assistant Professor at [redacted] College of Engineering states the Petitioner's research of nanoparticles and polyclusters "provides important insight into molecular structures that have valuable properties for effective implementation as catalysts, carriers for drugs and environmental materials." He explains her findings on using metal-organic framework composites "show an effective way to reduce carbon dioxide and inversely reduce global warming."

The Petitioner also submitted letters from scientists in her field explaining how her work has been relied upon by themselves and other researchers in the field. A-D-K-, Associate Professor of

[2] We use initials to protect the privacy of the referenced individuals.

Chemistry at [redacted] states he cited the Petitioner's work involving the synthesis of a two-dimensional coordination polymer in one of his own articles and states, "I owe a significant portion of my success to [the Petitioner's] work, which reflects the influence of her research on the development of novel compounds." Professor A-D-K- also describes how three other research groups cited and relied upon the Petitioner's research in their articles. P-K-M-, Assistant Professor of Chemistry at the [redacted] states she has never collaborated with the Petitioner but has cited the Petitioner's research in an article she published. Professor P-K-M- also describes how two other research teams cited the Petitioner's work in their publications. She states the Petitioner's research on "carbon-capturing MOFs has significant ramifications for the nation's ecological sustainability." A-H-, Assistant Professor of Chemistry at the [redacted] India, states that the nickel (II) complexes synthesized by the Petitioner "played an important role in serving as an anti-cancer agent in [her own] study and were shown to be effective anti-cancer agents." Professor A-H- also describes how three other research groups relied upon the Petitioner's work in their published research.

The Petitioner submitted copies of ten articles she co-authored that were published in scientific journals such as *Coordination Chemistry Reviews*, *European Journal of Medicinal Chemistry, Inorganic Chemistry, Journal of Inorganic and Organometallic Polymers and Materials*, and evidence of the high ranking of these journals in her field. The Petitioner submitted evidence that seven of her articles were cited a total of 45 times. The Petitioner submitted articles citing her publications and evidence that more than 73 percent of the citations of her work are by independent scientists. The Petitioner submitted evidence that the number of citations to five of her articles places them among the top 10 percent of the most-cited publications in chemistry in their years of publication. The Petitioner also submitted data showing she is among the top 15 percent of researchers in her field in terms of citation impact and within the top five percent of researchers in her field in terms of publication productivity. The Petitioner also submitted evidence that her research on metal organic framework composites for reduction of carbon dioxide was funded by the European Union. Contrary to the Director's determination, the letters from scientists in her field, her publications and citation history show the Petitioner's record of success and the high level of interest in her work by other scientists in her field.

The record also shows the Petitioner has made progress towards achieving the proposed endeavor and has a plan for her future activities. In her statement submitted in response to the RFE, the Petitioner explained that she has published three articles on cancer treatment research which support the first part of her proposed endeavor and three articles on MOF composites which support the second part of her proposed endeavor on reducing carbon dioxide emissions and storing renewable solar energy. The record shows the significant number of citations to these articles by independent researchers in the Petitioner's field. The Petitioner also discussed how her past work provided the foundation for her proposed research and described in detail her plans for future research projects.

In sum, the relevant evidence demonstrates the Petitioner's education, skills, knowledge, record of success, plan for future activities, her progress towards achieving the proposed endeavor, and the interest in her work of other scientists in her field. The Petitioner has established that she is well-positioned to advance her proposed endeavor and the Director's contrary determination is withdrawn.

C. Whether on Balance a Waiver is Beneficial

The third *Dhanasar* 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.

The Director determined the Petitioner did not meet this prong because she did not meet the second prong and did not show an urgent national interest in her work. On appeal, the Petitioner asserts her work is of urgency with respect to national goals regarding cancer prevention and climate change. The Petitioner asserts that because the Petitioner's research is the subject of urgent national interests involving critical technologies, she would be an asset to the scientific community in the United States, even if other qualified U.S. workers are available. The record supports the Petitioner's claims.

The Petitioner submitted the 2022 National Science and Technology Council Critical and Emerging Technologies List Update, which includes renewable energy generation and storage and biotechnologies, both of which are addressed in the Petitioner's proposed endeavor to conduct research on storing renewable solar energy and synthesizing new molecules for cancer treatment. The Petitioner also submitted articles from the World Health Organization discussing the global cancer burden growing amidst a mounting need for services, and stating cancer is the second leading cause of death globally and in 2018 accounted for an estimated 9.6 million deaths. The Petitioner submitted Centers for Disease Control and Prevention (CDC) cancer data and statistics which state in 2020, 1,603,844 new cancer cases were reported and 602,347 people died of cancer. The Petitioner also submitted National Cancer Institute articles on cancer treatment and therapy discussing research on nanotechnology cancer therapy and stating in 2022 President Biden announced a reignition of the Cancer Moonshot with the goal of reducing the cancer death rate by half within 25 years and improving the lives of people with cancer and cancer survivors. This evidence shows the national urgency for improved cancer treatment, which the Petitioner's proposed endeavor addresses.

The Petitioner also submitted the Paris Agreement on strengthening the global response to the threat of climate change and the Presidential Multi-Agency Research and Development Priorities for the Fiscal Year 2024 Budget ("budget priorities"). The Paris Agreement and budget priorities attest to the national and global urgency of combating climate change, which the Petitioner's proposed endeavor aims to address through research on the reduction of carbon dioxide and the storage of renewable solar energy. The budget priorities also include reducing the death rate from cancer by half, which the Petitioner's proposed endeavor would address through her research on cancer treatment.

The Petitioner also claims her education and proposed endeavor in a science, technology, engineering, and math (STEM) field merits special consideration under United States Citizenship and Immigration Services (USCIS) Policy. USCIS recognizes the importance of progress in STEM fields and the

essential role that individuals with advanced STEM degrees have in fostering such progress. 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/. Accordingly, strong positive factors to consider when assessing the third *Dhanasar* prong include possession of an advanced STEM degree, particularly a doctoral degree, engagement in work furthering a critical and emerging technology, and being well positioned to advance the proposed STEM endeavor of national importance. *Id.* All of these factors are present in the Petitioner's case.

The relevant evidence shows the national interest in the Petitioner's proposed endeavor is sufficiently urgent to warrant forgoing the labor certification process and the United States would benefit from the Petitioner's contributions even if other qualified U.S. workers are available. Considered together, these factors 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 in the Petitioner's case. The Director's contrary determination is withdrawn.

III. CONCLUSION

The Petitioner has established that she is an advanced degree professional eligible for EB-2 classification, that she meets all three *Dhanasar* prongs, and merits a waiver of the job offer requirement in the national interest.

ORDER: The appeal is sustained.