U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33944052

Date: OCT. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist-scientist, 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. 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.

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;

[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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director determined that the Petitioner qualified for classification as an advanced degree professional and that the proposed endeavor has substantial merit and national importance. However, the Director concluded that the Petitioner did not establish that she is well-positioned to advance her proposed endeavor.

The record reflects that the Petitioner has a Ph.D. in dental surgery. She asserts that her proposed endeavor is to "examine lasers, dental caries, and restorative dentistry in order to improve approaches to and products for the maintenance of dental hygiene and procedures to prevent and mitigate advanced tooth decay." She further asserts that she "intend[s] to pursue a position as a research assistant at the Dental College of Georgia at Augusta University," or "a very similar position" in the United States.

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

The first prong of the Dhanasar framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. We agree with the Director that the Petitioner meets the first prong of the Dhanasar framework.

The second prong shifts the focus from the proposed endeavor to the individual, and whether they are well-positioned to advance it. Id. at 890. In determining whether a petitioner is well-positioned to advance their 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. Matter of Dhanasar, 26 I&N Dec. at 890.

The record includes the Petitioner's curriculum vitae, academic records, published work, peer review activity, recommendation letters, and information regarding the Petitioner's citation record. On appeal, the Petitioner asserts that the Director failed to properly evaluate the letters of recommendation, imposed an improper standard of review which "required an inordinate level of influence on the field," and failed to review all the relevant evidence, particularly her citation record. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed endeavor under the second prong of the Dhanasar analytical framework.

We conclude that the Petitioner's education, skills, and knowledge are positive factors in support of her positioning to advance the proposed endeavor. Specifically, the Petitioner's Ph.D. in dental

surgery relates to her proposed endeavor of examining lasers, dental caries, and restorative dentistry to prevent and mitigate advanced tooth decay. In support of establishing her record of success, she refers to previously submitted letters of recommendation. Specifically, she notes that Dr. [redacted] highlighted why her research is important to the field, opining that her research on the morphologic structure of the tooth and exposure to lasers, provides vital observations" for restorative dental work.[2] In addition, Dr. [redacted] explained why the Petitioner's research was of considerable significance, stating that "findings like those cultivated by [the Petitioner] are vital for the continual improvement of regular commercial dental products . . . [and] her work aids in advancing dental health, ultimately necessitating fewer restorative procedures which are frequently invasive and expensive."[3] She also emphasizes that Dr. [redacted] "credited [her] for her pivotal role in developing a patented auto-shading system, as well as her expertise that greatly contributed to the growth and innovation of the dental industry as evidenced by the patented design." Additionally, in his letter of recommendation, Dr. [redacted] states that the Petitioner's research on enhanced efficacy of adhesives "benefits the durability and longevity of dental work. This contributes to improved health outcomes and increased comfort, both of which are necessary for quality of life in patients."

The Petitioner also refers to her citation record and peer review activity, asserting that the record demonstrates the significance of her citations. She states that she "has published a remarkable 23 peer-reviewed journal articles, two conference abstracts, and two book chapters . . . and her published work had been cited an incredible 572 times as of the date she filed her petition . . . This record is vastly more impressive than that of the aforementioned Dr. Dhanasar, the petitioner in the namesake precedent case. According to his Google Scholar profile, Dr. Dhanasar accumulated, at best, a mere 23 citations by the time his case was finally adjudicated by the AAO in December 2016, well after his original filing date." The petitioner concedes that Dr. Dhanasar also boasted other substantial achievements in his field but requests that we accord her the same consideration for her outstanding publication and citation record. We agree with the Petitioner that the evidence appears to demonstrate that the published work that she has participated in and contributed to has been cited frequently by independent researchers at a rate that is high relative to others in the field. While this is a positive factor, we do note that most of the works which have received the most attention appear to be those in which the Petitioner was one of several contributors. We further note that a publication bearing a high journal ranking or impact factor is reflective of the publication's overall citation rate; however, it does not show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in their field.

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[2] Dr. [redacted] "notes that [the Petitioner] paid special attention to how the morphologic structure of the tooth is affected by exposure to lasers, particularly in relation to bond strength to composite resins. She concluded that the application of the two processes on enamel decreased the microshear bond strength between composite resin and tooth enamel. This finding problemalizes further restorative work, and as such is a vital observation. However, she also determined that a similar combination of C02 irradiation of acidulated phosphate fluoride does not share these drawbacks. making it a key candidate for implementation in dental care."

[3] Dr. [redacted] notes that "the study of novel antibacterial materials in dentistry is particularly important for developing complementary products to assist with dental hygiene for groups whose access to or use of normative habits is in some way compromised. These demographics include those with limited access to regular products as well as those groups who are are often averse to dental hygiene habits, such as school-aged children."

The next factors applicable to the second prong of the Dhanasar framework are a model or plan for future activities and any progress towards achieving the proposed endeavor. The Petitioner contends that she has provided a model or plan for her future research activities, specifically she asserts that she "intend[s] to pursue a position as a research assistant at the Dental College of Georgia at Augusta University," or "a very similar position" in the United States. While the Petitioner may have the intention to pursue a research position in the United States, we conclude that the fact that the Petitioner does not currently have such a position weighs against demonstrating either a specific model or plan for future activities or progress toward achieving the endeavor, and the Petitioner did not provide evidence of support from the university for this position, nor evidence of funding for or availability of such a position. The Petitioner seeks a national interest waiver of the job offer requirement. Therefore, an offer of employment is not a requirement for approval, nor do we consider the lack of a job offer a negative factor in analyzing the evidence, depending upon the specific circumstances of the case. However, in this instance, the Petitioner's own stated intention for advancing her endeavor requires an offer of employment, and she has not provided documentary evidence of pursuing this employment or any specific steps taken toward achieving employment. By contrast, the petitioner in Matter of Dhanasar was already employed as a postdoctoral research associate at a university, was performing research and development related to his proposed endeavor at this university, and intended to continue to do so. Matter of Dhanasar at 891. Finally, we do not consider the fact that the Petitioner's citation record to be evidence of the Petitioner's own progress toward achieving her endeavor. Without proposed employment in the United States, a statement of interest or support from a university or research institution, evidence of potential funding for such a position, or other such evidence, the Petitioner has not demonstrated that she currently has the ability to pursue her proposed endeavor.

The final factor enumerated in Matter of Dhanasar relates to evidence of interest of potential customers, users, investors, or other relevant entities or individuals. Here, we similarly conclude that the evidence in the record does not weigh in favor of demonstrating that the Petitioner is well-positioned to advance the endeavor. The Petitioner again emphasizes her citation record as evidence of interest from relevant entities or individuals. However, we conclude that this assertion is not sufficiently established by the record. By contrast, in Dhanasar, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. Id. at 893, Fn. 11.

Not every individual who has conducted original research and published findings will be found to be well-positioned to advance their proposed endeavor. Rather, we must examine the factors set forth in Matter of Dhanasar to determine whether, for instance, the individual's education, skills, and record of success, their model or plan for future activities, their progress towards achieving the proposed endeavor, and the generation of interest among relevant parties supports such a finding. Id. at 890. In considering the record in totality, particularly the fact that the Petitioner has not demonstrated the ability to pursue her proposed endeavor in the United States through an offer of employment, a statement of interest, or other potential funding that would allow the Petitioner to pursue her endeavor, we conclude that the Petitioner has not established that she is well-positioned to advance the proposed endeavor.

C. Whether, on Balance, Waiving the Job Offer Requirement Would Benefit 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 requirement of a job offer and thus of a labor certification. Because the Petitioner has not demonstrated that she is well-positioned to advance the proposed endeavor, as required by the second Dhanasar prong, we need not address whether the Petitioner has established the third prong of the Dhanasar framework. We acknowledge the Petitioner's arguments on appeal as to the third prong but, having found that the evidence does not establish that the Petitioner is well-positioned to advance the proposed endeavor, we will not address those arguments here. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.