U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34813516

Date: OCT. 29, 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 linguistics, seeks second preference 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 EB-2 immigrant 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 that the Petitioner qualified for the EB-2 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 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 dismiss 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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 Third, Ninth, Eleventh, and D.C. Circuit Courts to conclude the national interest waiver determination is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Petitioner filed the petition in September 2023 and describes his two-fold proposed endeavor as follows: 1) to research and develop a "system for context-based responses to enhance strategic indirect communication in advertising, forensic language analysis, and social media," (the record contains an alternative description of his endeavor as "develop a system of strategically performing, identifying and responding to non-conventional indirect directives"); and 2) obtain a position as a linguistics professor and teach courses in pragmatics, semantics, syntax, general linguistics, and teaching English to speakers of other languages (TESOL). In response to the Director's request for additional evidence (RFE), the Petitioner provided a personal statement where he described his endeavor as follows:

> I will explore the mechanisms of strategic implicit communication, specifically techniques of maximal and optimal implicit persuasion and influence. . . . I plan to develop an AI-driven system of dynamic context-dependent communicative and non-communicative persuasion strategies and predicted responses involving counterstrategies to improve the use of strategic indirect communication in advertising, forensic language analysis, and social media.

At the time of filing the petition, the Petitioner was a PhD student in the Department of Linguistics and TESOL at the [redacted] with an unspecified graduation date. The Petitioner identifies the [redacted], or a similar institution, as a desired employer to further his endeavor after completing his PhD. However, in the meantime, the Petitioner claims he will pursue his endeavor as an enhanced graduate teaching assistant at his PhD institution. After analyzing the initial evidence, the Director issued a RFE, noting the deficiencies in the record, to which the Petitioner timely responded. The Director determined that although the Petitioner satisfied the first prong, he did not fulfill the remaining two prongs of *Dhanasar's* analytical framework.[2]

A. Prong Two of the *Dhanasar* Framework

The second prong shifts the focus to the Petitioner in order to determine whether he is well positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890. To corroborate his claim that he is well-positioned to advance his endeavor, the Petitioner submitted his curriculum vitae, copies of his degrees, a signed statement explaining his proposed endeavor and future plans, copies of his

[2] Because the Petitioner's proposed endeavor includes a teaching and a research component, we must bifurcate our analysis. The Petitioner's endeavor to teach courses in linguistics and TESOL would not meet the standard for national importance set forth in *Dhanasar*. *See Matter of Dhanasar*, 26 I&N Dec. at 893. Thus, while we agree with the Director's determination that his endeavor to perform research in the field of linguistics meets the standard set out in prong one of the *Dhanasar* framework, we will withdraw the Director's determination as it relates to teaching. Moreover, as in *Dhanasar*, we will not address the remaining prongs in relation to the Petitioner's teaching activities. *Id.*

two peer-reviewed journal articles, his Google Scholar citation record indicating three citations of his work from three publications,[3] two letters of reference, two advisory opinions, an assigned research project titled [redacted] and another research article that is in progress titled [redacted] In response to the Director's RFE, the Petitioner provided an updated personal statement describing his endeavor and three of his future research projects.[4] He further highlighted articles and news sources discussing the increased demand for artificial intelligence, machine learning, and data science jobs and how language and linguistics complement these fields. The Petitioner also provided articles related to Russia's use of artificial intelligence in their ongoing information warfare operations against the American population, and how this is important to our national security. The Petitioner submitted a letter from a professor and chair at the [redacted] addressing his possibility of future employment and a letter of reference from an associate professor of applied linguistics from the Iranian university where he obtained his bachelor's and master's degrees. Finally, the Petitioner provided an email inviting him to submit an article to the Journal of Language, Culture, and Religion, which is published by the Dallas International University, and information about what the peer review system is about. 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 his proposed research.

The Petitioner asserts he is well-positioned to advance his endeavor because of his "record of success" and cites to two peer-reviewed journal articles he published in the *International Journal of Applied Linguistics* and *Advances in Language and Literary Studies*.[5] We acknowledge that this evidence describes the Petitioner's research and the research's proliferation in the field. However, the publication evidence does not materially, relevantly, or probatively demonstrate that publication of two journal articles is a "record of success," supporting how well-positioned the Petitioner is to advance his endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence).

We have considered the statements of support submitted by the Petitioner, and we acknowledge that the Petitioner is held in high regard by the individuals who wrote letters on behalf of his petition. However, in order for these letters to establish the Petitioner is well-positioned to advance his endeavor, they must provide sufficient context to establish the impact of the Petitioner's research. *Id.* Here, the letters fall short of this, as their descriptions of the impact of his work are not congruent to his stated research endeavor. *Id.* For example, one letter describes his research as enhancing our comprehension of language use and spoken communication dynamics, as well as providing valuable insights into character development and narrative construction in literature. This is a positive description of the Petitioner's

[3] The titles of these three articles are: [redacted]

[4] These are described briefly as: [redacted]

[5] The record also contains an article titled [redacted] published in [redacted] 2021 in GEMA Online in the *Journal of Language Studies*.

research endeavor but does not provide information to help us understand why he is well-positioned to advance his endeavor. *Id.* Similarly, another writer explained that the Petitioner's work advances the knowledge of linguistic phenomena by unraveling the intentions behind implications, analyzing contextual influences, and exploring the interplay between sentient intensity and communication dynamics. But the writer's description does not sufficiently describe how the Petitioner's work correlates to his proposed endeavor (as described above) such that it is apparent he is well-positioned to advance it. *Id.* Moreover, in the description of the Petitioner's work that was provided by another reference, they explain that the Petitioner's use of "innovative methodologies" is important, and that his research project "significantly advances" the study of pragmatics. The writer also explains that the Petitioner's research focuses on "demonstrating Relevance Theory's systematic capacity to account for layers of implicata, including varying degrees of implicitness, while also proposing novel insights into the prerequisites for maximal relevance in understanding implicata within conversational contexts of thriller novels, thus offering a comprehensive framework for non-spontaneous interpretation and character-driven implicature comprehension." However, it is not sufficiently evident from the letters how the Petitioner's prosecution of his endeavor, even utilizing "innovative methodologies," demonstrates a record of success in related or similar efforts. *Id.* And the Petitioner does not adequately establish that carrying out his endeavor, or related or similar efforts as described in the letters, are a model or plan for future activities or indicative of progress towards achieving the proposed endeavor. *Id.* USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility, thus, the submission of these support letters is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

Furthermore, the Petitioner asserts that his work has received "substantial attention" because two out of his three articles have been cited in other publications. The Petitioner asserts the Director incorrectly analyzed the value of his citation record to the field of linguistics, claiming that four out of five citations are from independent sources and that he has a citation record of 80%. In his RFE response, the Petitioner emphasized that because he is first author on his publications, his scholarship is influential. The Petitioner asserts that these citations are evidence of this impact on the field and that he has already made progress toward his larger effort to advance his proposed endeavor. However, as the Director noted, the Petitioner did not submit any evidence to show how often other individuals in the field of linguistics are cited and without additional context, the Petitioner has not established his publications in two peer-reviewed articles, which have been cited three times, are "substantial" or influential in the field of linguistics. *See Matter of Chawathe*, 25 I&N Dec. at 375. Moreover, the Petitioner has not established that the number of citations received by his published articles reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Further, while we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that Dr. Dhanasar was well-positioned under the second prong was not based on his citation record. Rather, in our precedent decision, we found "[t]he petitioner's education, expertise, and experience in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Matter of Dhanasar*, 26 I&N Dec. at 893. While not all petitions filed by researchers require the same

evidence to establish the second prong of the *Dhanasar* framework, the Petitioner's evidence does not demonstrate a sufficient level of support and interest from institutions to establish he is well-positioned to advance his proposed endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375.

Moreover, while we acknowledge that the Petitioner has published in the linguistics field, the evidence does not sufficiently demonstrate how the publications establish how well-positioned he is to advance his endeavor. *Id.* The record demonstrates that the Petitioner has conducted and published research while pursuing his education, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research has added 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 his 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. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the area of linguistics. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing his research. The Petitioner also submitted articles to frame the context of the Petitioner's endeavor. The articles the Petitioner submitted demonstrate the substantial merit and national importance of the field of the Petitioner's proposed endeavor. But they are insufficient to showcase how well-positioned to Petitioner is to advance their proposed endeavor because they do not specifically discuss his endeavor or research.

Furthermore, we note that the Petitioner introduced evidence citing to a shortage of linguists in our workforce. The U.S. Department of Labor directly addresses labor shortages through the labor certification process. As such, assertions of a linguist shortage are neither relevant nor persuasive. *See Matter of Chawathe*, 25 I&N Dec. at 375. We note that the letter from the [redacted] department chair expressing that the Petitioner would be an "excellent candidate for an adjunct teaching position" relates to the Petitioner's teaching endeavor and does not mention his interest in research. *Id.* Moreover, the letter is not an offer of employment. *Id.* For these reasons, neither a labor shortage or this letter establish his burden under *Dhanasar's* second prong. *Id.*

The Petitioner asserts on appeal that the impact of his research does not need to be substantial or influential, and that holding him to that standard is applying the regulations for extraordinary ability (E11) petitions. The Petitioner further asserts the Director ignored relevant evidence that should be of primary consideration in a prong two analysis. Specifically, the Petitioner asserts that his education, skills, knowledge and record of success were relevant factors that the Director ignored in concluding that he is not well-positioned to advance the proposed endeavor. In our de novo review, we conclude the Director's decision, as it relates to prong two of the *Dhanasar* framework, properly acknowledged the submission of evidence, including educational credentials, recommendation letters, his work history, journal publications, citatory information, and articles. In addition, the Director acknowledged that the Petitioner has a master's degree, is working towards his doctoral degree, and has experience conducting research in the field, but determined that this is insufficient to establish he is well-positioned to advance his endeavor. As such, we conclude upon de novo review, the Petitioner's evidence is insufficient to establish he is well-positioned to advance his endeavor.

B. Prong Three of the *Dhanasar* Framework

Because the Petitioner has not established his eligibility under the second prong, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

III. CONCLUSION

For the above stated reasons, the Petitioner has not established that a waiver of the job offer and labor certification process, in the exercise of our discretion, is in the national interest.

ORDER: The appeal is dismissed.