U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33947855

Date: SEP. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a professor in the field of complex networks, seeks second preference immigrant classification (EB-2) 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 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 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

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 that 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 holds a Ph.D. in computer science from [redacted] in Malaysia and is an associate professor of the Department of Information Technology at [redacted] in Pakistan. The Petitioner submitted an academic evaluation, diploma, and transcripts demonstrating that he qualifies for the EB-2 classification as an advanced degree professional. The remaining issue is whether the Petitioner has demonstrated eligibility for a national interest waiver.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analysis, which considers the substantial merit and national importance of the proposed endeavor, 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. *Id.*

The Director identified the Petitioner's endeavor as being "a Researcher in the field of Complex Networks" and determined that the endeavor is of substantial merit but not of national importance. The Director did not specifically address or analyze any piece of evidence under the first prong but concluded that "multiple articles, studies, and reports" submitted by the Petitioner do not demonstrate national importance "as there is no significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." The Petitioner contends on appeal that the Director mischaracterized his proposed endeavor and erred in analyzing the endeavor's national importance only on the basis of its economic impact.

Upon review, we agree with the Petitioner that the Director did not discuss or analyze the full extent of the endeavor in evaluating the national importance. On remand, the Director should revisit the descriptions of the Petitioner's proposed endeavor in his personal statements, recommendation letters from other professors who refer to his research, and the contents of his peer-reviewed journals and focus on what the Petitioner will be doing rather than the specific occupation.

For example, the Petitioner's personal statements describe his endeavor as "[analyzing and visualizing] complex real world systems as networks in order to improve understanding of their robustness, vulnerability, and self-organization." The Petitioner's plan is to pursue a position as an assistant teaching professor in computing and information science at [redacted] (or other similar university) and perform research in "modeling and analysis of COVID-19 diffusion as a two-mode complex network" and "finding best software development team composition using complex network approach." The Petitioner also included other future research topics such as "two-

mode network analysis of dengue epidemic in USA" and "identifying the main key nodes in the dark/terrorist (covert) networks."

Furthermore, the Director did not analyze the endeavor's national importance in terms of its broad impact to the field as contemplated in *Dhanasar*: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* After identifying the Petitioner's endeavor on remand, the Director should determine whether the endeavor has national importance by considering the broad implications of his research in advancing and understanding the field of complex networks.

B. Well-Positioned to Advance the Proposed Endeavor

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 Petitioner, on appeal, claims that the Director failed to evaluate all of the relevant evidence, disregarding his "23 peer-reviewed journal articles and seven conference papers that received 327 citations" and "three of his papers had received enough citations to rank among the top 20% of the most-cited papers in all of Computer Science in their respective years of publication." The Petitioner also claims that the Director erred by imposing novel factors that do not have a proper legal basis in *Dhanasar*.

Here, the Director did not address or analyze the evidence based on all the factors listed in the second prong of *Dhanasar*. In doing so, the Director overlooked or was dismissive of the evidence relevant to the second prong analysis, such as the Petitioner's Ph.D. in computer science, journal citations, the number of published articles, or recommendation letters in the record. For instance, the Director stated that the Petitioner "did not submit any independent, objective evidence to show that the beneficiary has a record of success as a Researcher in the field of Complex Networks" and dismissed the journal citations or impact factor as not being sufficient in supporting the Petitioner's influence in the field. The Director also applied standards that are outside the scope of the analytical framework established in *Dhanasar* by requiring the Petitioner's journal articles to have "new facts or analysis" instead of merely "[summarizing] the current state of understanding on a topic and [summarizing] previously published studies."

On remand, the Director should conduct an individualized consideration of the multifactorial analysis under *Dhanasar*'s second prong to determine how well positioned the Petitioner is to advance the proposed endeavor in the field of complex networks. The Director should closely examine the Petitioner's co-authored journals featured in scientific outlets on topics such as complex network modeling of dengue epidemic, using complex networks on the software development team composition, or analyzing dark networks with link prediction methods. The Director should consider the Petitioner's attainment of a Ph.D. in computer science to evaluate whether it is an especially positive factor in consideration with the other factors while keeping in mind that a degree in and of

itself is not a basis to determine that a person is well positioned to advance a proposed endeavor. *Id.* The Director should analyze the evidence under the preponderance of evidence standard, or that the Petitioner is, more likely than not, well positioned to advance the proposed endeavor. If the Director finds the evidence insufficient, the decision should explain the reasons for ineligibility based on the factors set in *Dhanasar*'s second prong.

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

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.

On appeal, the Petitioner asserts that the decision "made no effort whatsoever to analyze any of the relevant factors explicitly mentioned in *Dhanasar*." We agree that the Director did not sufficiently acknowledge and address the evidence of record weighed in balancing the relevant considerations in the third prong of *Dhanasar*. An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i); *see also, e.g. Matter of M-P-* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). On remand, the Director should re-evaluate the Petitioner's claims under the third prong in light of the revised analysis of the first two prongs per the discussion above and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

This matter will be remanded to the Director to determine if the Petitioner has established eligibility for a national interest waiver. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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