U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33387017

Date: SEP. 25, 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 mechanical engineering, 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 that, although the record established the Petitioner's qualification as a member of the professions holding an advanced degree, it 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 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

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

The Petitioner's proposed endeavor, as described in a statement initially submitted with his petition, was "to develop a new, interdisciplinary-based methodological approach to vibrations engineering in order to advance designs in aerospace, civil structures, and robotics." He explained that this endeavor "has applications in the advancement of aerodynamics and control, aerospace, maritime, and industrial development and production technologies, and renewable generation, which are formally recognized as critical and emerging technologies." In a second statement submitted with the Petitioner's response to the Director's request for evidence, the Petitioner elaborated that he would focus "on the development of technologies that are crucial for national security, environmental sustainability, and technological innovation" and "explore three primary areas: enhancing unmanned aircraft vehicle technology for military applications, advancing the capabilities of creature-like flexible underwater mobile robots for national defense and oceanographic research, and pioneering flow-induced vibration energy harvesting systems for sustainable energy solutions."

In denying the petition, the Director concluded that although the Petitioner demonstrated that the proposed endeavor had substantial merit, he had not established the national importance of his proposed endeavor, that he was well positioned to advance the proposed endeavor, and that on balance, waiving the job offer requirement would benefit the United States. The Director therefore determined that the Petitioner had not shown his eligibility for a national interest waiver as a matter of discretion.

On appeal, the Petitioner asserts that the Director abused their discretion in failing to address all evidence, citing *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) in support. However, the court in *Buletini* did not suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *See Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

The Petitioner further argues on appeal the record demonstrates that he satisfies all three prongs of the *Dhanasar* analytical framework as well as his eligibility for a national interest waiver as a matter of discretion. Upon de novo review of the record in its entirety, the Petitioner has not established that he is well positioned to advance the proposed endeavor, as required under the second prong of the *Dhanasar* analytical framework. Accordingly, we conclude that he has not provided adequate reasons

or evidence on appeal to overcome the Director's determination that he is not eligible for a national interest waiver as a matter of discretion. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the first and third prongs of the *Dhanasar* framework. *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 D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The second prong of the *Dhanasar* framework 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The record includes the Petitioner's curriculum vitae, academic records, published work, reference letters, invitations to present at conferences, information regarding the Petitioner's publication and citation record, and excerpts from research citing his work. The Petitioner emphasizes on appeal that his education, reference letters, and his significant publication and citation records demonstrate that he is well positioned to advance the proposed endeavor.

Turning to the factors enumerated in *Matter of Dhanasar* for evaluating evidence under the second prong, we first consider the Petitioner's education, skills, knowledge and record of success in related or other efforts. We acknowledge that the Petitioner has received the foreign degree equivalent of a master's degree in mechanical engineering from [redacted] and that, at the time the petition was filed, the Petitioner was pursuing a Ph.D. in mechanical engineering from the [redacted] By contrast, the petitioner in *Dhanasar* held multiple graduate degrees, including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. Further, we look to a variety of factors in determining whether a petitioner is well positioned to advance their proposed endeavor, and education is merely one factor among many that may contribute to such a finding.

Reference letters in the record describe the Petitioner's research in the areas identified in his second proposed endeavor statement. For example, an associate professor and director of the [redacted] discusses the Petitioner's work "on path planning and other optimizations for diverse robotics systems," and concludes that the Petitioner "successfully developed optimizations for the use of robots in many critical contexts," and explains this research project "offers vital enhancements to robotics mechanics." Dr. [redacted] explains that through his "work on high aspect ratio wings and flow vibrations," the Petitioner has "provided a foundation for their application in expanded contexts, including commercial aircrafts." However, beyond these broad statements, these letters do not detail how the Petitioner's research has had an impact in the field, assisted others in the field, or otherwise reflect a record of success or progress showing that he is well-positioned to advance the proposed endeavor.

To establish his claimed "exceptional" record of success, the Petitioner provided a Google Scholar document demonstrating that he published seven peer-reviewed journal articles and two peer-reviewed

conference articles, an analysis of the frequency with which these articles had been cited to by independent researchers in the field of engineering, and excerpts of the articles themselves. The Google Scholar document shows that the Petitioner was first author on three of the seven journal articles. The record indicates that he was lead author on one of the two conference articles. The record also included a letter from Dr. [redacted] associate professor at the [redacted] discussing how he and other researchers used one of the Petitioner's research articles to achieve their own research goals. However, Dr. [redacted] does not offer information to establish that the Petitioner's citations are highly relevant to others in the field of mechanical engineering. The analysis of the Petitioner's citations rates discusses their ranking within the overall field of engineering, rather than mechanical engineering, the Petitioner's stated field; the Petitioner does not offer an analysis to show that the rate at which he has published is high relative to others in field of mechanical engineering. While Dr. [redacted] states in his reference letter that the Petitioner's work has been featured "in a number of esteemed scientific journals," he also does not address how the number of the Petitioner's publications compares to others in the Petitioner's field. Absent additional evidence showing that the Petitioner's publication and citation rates are high relative to others in his field, this record does not sufficiently establish the Petitioner's record of success as claimed on appeal.

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. Reference letters in the record show that the Petitioner has conducted research relating directly to each of the three research projects that he intends to carry out as part of his proposed endeavor. The Petitioner also provided a letter from Dr. [redacted] an assistant professor in the mechanical engineering department at [redacted] discussing the Petitioner's research into "canonical flow-induced vibration problems" as a doctoral student and expressing an intent to hire the Petitioner as a visiting research scholar upon his successful completion of the doctoral program, based in part upon this research. The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies. It further shows that the Petitioner plans to pursue, and has been offered, employment as a visiting research scholar to conduct further research upon completion of his graduate work. However, this evidence is not sufficient to show that this work renders him well positioned to advance his proposed research. While we recognize that research must add 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 their 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 or a record of success in similar efforts supports such a finding. *Id.* at 890. Here the Petitioner has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the field of mechanical engineering or that it has generated substantial positive discourse in the mechanical engineering community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research in this field.

The final factor enumerated in *Matter of Dhanasar* relates to evidence of interest of potential customers, investors, or other relevant entities or individuals. Here we 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 asserts that publishers and editors have shown "considerable interest" in

as his work because it "been featured in some of the top journals in his field." However, the Petitioner does not offer evidence to support this assertion.

The Petitioner further argues that interest in his proposed endeavor is demonstrated as his research has been funded through a grant from the Office of Naval Research (ONR). The Petitioner provided one research article indicating that the work had been supported by a grant from ONR's Young Investigator Program. However, the Petitioner was not first author on this article; rather he was one of four researchers involved in the research. The Petitioner does not offer additional evidence to establish his role in receiving this funding. 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. *Matter of Dhanasar*, 26 I&N Dec. at 893, Fn. 11. Evidence in the record regarding the Petitioner's funding from a U.S. government agency does not establish consistent government funding or a significant role in obtaining such funding similar to the petitioner's role in *Dhanasar*.

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, we conclude that the Petitioner has not established that he is well-positioned to advance the proposed endeavor.

III. CONCLUSION

As the Petitioner has not met the requisite second prong set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.