U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31263065

Date: SEPT. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Petitioner qualified as an advanced degree professional, he did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1] 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

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).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

II. ANALYSIS

As clarified on appeal, the Petitioner's proposed endeavor is "to develop optimized operational techniques for integrated power systems in order to create more sustainable and efficient energy solutions that lead to better environmental outcomes." His endeavor is "not his work as a researcher or a future postdoctoral fellow." Rather those are the "means be which he wil[l] pursue his proposed endeavor and impact national and international enterprises." The Petitioner explained that while he is pursuing his proposed endeavor, he will also be earning his Doctor of Philosophy (PhD) at the [redacted] and once completed, he will obtain a postdoctoral research position at the same university.

The Director determined that the Petitioner's proposed endeavor has both substantial merit and national importance and we agree.[3] However, the Director concluded that the Petitioner did not establish that he is well-positioned to advance the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States.

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. *Id.*

The Petitioner asserts on appeal that the Director applied a higher standard in evaluating the evidence under the second prong, pointing to language in the decision that appears similar to that used in the evidentiary criteria for individuals of extraordinary ability. *See* 8 C.F.R. § 204.5(h)(3). We do not agree that these similarities show that the Director applied a higher standard than that spelled out in *Dhanasar*. For example, the Director stated that the evidence did not show how the Petitioner's work "has served as an impetus for progress in the field," "affected the field," or "generated substantial positive discourse." However, in these instances, the Director was analyzing the evidence under up to three of the *Dhanasar* second prong factors: education, skills, knowledge, and record of success in related or similar efforts; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities. The Director was not applying inapplicable law as asserted by the Petitioner.

In addition, the Petitioner states that as the analysis of the second prong in the decision was copied from the Director's request for evidence (RFE), the Director did not sufficiently review the evidence

[3] On appeal, the Petitioner asks us to overturn the Director's determinations in the decision and affirm that the proposed endeavor has both substantial merit and national importance; however, as noted above, the Director concluded that his proposed endeavor has both substantial merit and national importance. Therefore, the Petitioner's contention that the Director "failed to comprehend" the Petitioner's proposed endeavor is misplaced.

"impacted *directly* on the points raised in the RFE." The Petitioner further relies on *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), arguing that the Director erroneously applied the law by not considering the totality of the evidence provided.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner contends the Director ignored evidence including letters from a professor and experts in the field, as well as the [redacted] article on peer-review. Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence he considers salient, he has not established how those omitted documents demonstrated eligibility. In other words, the Petitioner did not demonstrate that the Director's failure to discuss every document in detail changed the outcome of the case. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *see also United States v. Teixeira*, 62 F.4th 10, 25 (1st Cir. 2023) (concluding a trier of fact "need not articulate its conclusions as to every jot and title of evidence in making a determination"). Upon de novo review, we agree with the Director's determination that the Petitioner is not well positioned to advance the proposed endeavor.

The Petitioner earned a master's degree in power engineering in 2012 and is currently pursuing a Doctor of Philosophy (Ph.D.) in Electrical Engineering at the [redacted] Although the Petitioner's master's degree in power engineering is an especially positive factor, the totality of the evidence in the record does not show that he is well positioned to advance his proposed endeavor. A degree in and of itself is not a basis to determine that a person is well positioned to advance the proposed endeavor. *See 6 USCIS Policy Manual* F.5(D)(2), https://www.uscis .gov/policymanual. Furthermore, in *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Dhanasar*, 26 I&N Dec. at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

In asserting his record of success, the Petitioner states that his three peer reviewed journal articles demonstrate that he is well positioned to advance his endeavor. Although the elevated ranking of these journals, as noted by the Petitioner, may be one factor contributing to a showing of an individual researcher's record of success, we may not assume that every article published in a high-ranking journal is indicative of a record of success. The Petitioner also highlights his citation record consisted of 31 citations and states that "one paper with enough citations to rank among the top 10% of the most-cited papers published in Engineering in 2022." Here, the Petitioner relies on citation information concerning the larger field of engineering and compares his citation frequency in electrical engineering to that of the larger field. While electrical engineering is part of the larger field of engineering, the Petitioner does not submit sufficient evidence confirming that information extrapolated from the larger

field applies equally to each subfield within engineering, including electrical engineering. Thus, the Petitioner's comparison of his citation number in his field with information regarding citation in the larger field of engineering does not sufficiently establish the level of his impact in the field of electrical engineering. Regardless, citation frequency which is quantitative in nature does not reveal the reasons for the citations, which involve a qualitative analysis. More importantly, although we listed Dr. Dhanasar's "publications and other published materials that cite to his work" among the documents he presented, our determination that he was well positioned was not based on his citation record. Rather, we based it on "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest and funding from government entities." *Id.* at 893

Moreover, the record contains several letters that generally discuss the Petitioner's research and reference the publication of the Petitioner's research in journals or the citation of his work by others, including a few letters who state they have cited to his research in their own papers. Again, the Petitioner did not demonstrate that his citatory evidence reflects a record of success in the field.

The second prong in the *Dhanasar* analytical framework further evaluates whether the Petitioner has a model or plan for future activities. Here, the Petitioner states that he intends to pursue his proposed endeavor while conducting research at the [redacted] as well as continuing to publish his research in peer-reviewed publications and conference presentations. While the record contains an employment letter from a professor at the [redacted] confirming the Petitioner's employment as a researcher in conjunction with him earning his Ph.D., the Petitioner did not establish how this temporary job well positions him to advance his proposed endeavor. By contrast, the petitioner in *Matter of Dhanasar* was working as a postdoctoral research associate at a university, was already performing research and development related to his proposed endeavor at this university and intended to continue to do so. *Id.*

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 does not sufficiently demonstrate that the Petitioner is well-positioned to advance the endeavor. The Petitioner again emphasizes his citation record as evidence of interest from relevant entities or individuals. Additionally, the Petitioner contends that he has demonstrated this factor because his work "has drawn investment" from the National Science Foundation (NSF). However, we conclude that this assertion is not sufficiently established by the submitted evidence. The record shows that the [redacted] obtained a standard grant from the NSF in September 2021 for the project entitled [redacted] Here, the record does not show that the Petitioner, as opposed to the University for example, has received funding for his research proposals or future projects. 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.

The record demonstrates that the Petitioner has conducted and published research, but he has not shown 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 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. *Id.* at 890. The Petitioner, however, has not sufficiently established that his work constitutes a record of success or progress in advancing his research.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. As such, analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4] Accordingly, the Petitioner has not shown eligibility for a national interest waiver.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).