U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D-

DATE: MAY 19, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and researcher specializing in neonatology, 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal.

In March 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, the Petitioner submits additional documentation and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer –
> >
> > > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* clarifies that, after EB-2 eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the 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

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the 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, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.[2]

II. ANALYSIS

The Director found that the Petitoner qualifies as a member of the professions holding an advanced degree. The sole 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 stated that he is seeking a national interest waiver "based upon the prospective benefit of [his] research" rather than his clinical services. At the time of filing, the Petitioner was pursuing postgraduate medical training as a second-year pediatric resident at [redacted] a component of [redacted] In response to our RFE, he submits an [redacted] 2016 email notifying him of his "appointment to the Professional Staff" at the [redacted][4]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that his research addresses illnesses afflicting premature infants in Neonatal Intensive Care Units (NICUs). He has explained that his work aims to improve conditions in NICUs through focusing on alleviating problems such as sepsis in newborns, parent and caregiver mental health issues, and a lack of oxygen for newborns. In her letter, [redacted] a pediatrician and neonatologist at [redacted] noted that the Petitioner's research "promises to improve the care of premature neonates and their outcomes not only by improving how we perceive the disease and manage it, but also by improving the mental health of caregivers of these

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] The record reflects that he previously completed a fellowship in neonatal-perinatal medicine at [redacted]
[4] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about this prospective position to illustrate the capacity in which he intends to work.

complicated infants. His work is also improving the lives of the underprivileged in our society." We find that the Petitioner's proposed work as a neonatal researcher has substantial merit.

To evaluate whether the Petitioner's work satisfies the national importance requirement, we requested evidence documenting the "potential prospective impact" of his work. The Petitioner's response explains that his research is aimed at "dealing with late-onset sepsis in the NICU," "determining which children are at the greatest risk," and understanding predictors of sepsis such as apnea and hypothermia. The Petitioner continues: "Saving children's lives in this situation is a national problem and the national interest. . . . Caring for premature infants is costly; improving the chances of success saves lives and money." The record also includes letters from physicians and professors of medicine discussing his research concerning neonatal care improvements and its potential benefit to our nation's healthcare system. The record also establishes that the proposed benefit of his research has broader implications, as the results from his work are disseminated to others in the field through medical journals and conferences. We find the evidence sufficient to demonstrate that the Petitioner's neonatology research is of national importance. As the Petitioner has documented both the substantial merit and national importance of his proposed research, he meets the first prong of the *Dhanasar* framework.

While the Petitioner's care and treatment of patients has substantial merit, the record does not establish that his clinical work would impact the neonatology field and healthcare industry more broadly, as opposed to being limited to the patients he serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a physician and neonatologist does not alone meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner's qualifications. The Petitioner submitted documentation of his published work, professional memberships, academic credentials, and an internal award from [redacted] He also offered four reference letters discussing his medical training and research projects. In response to our RFE, the Petitioner provided evidence of his peer review activities, a poster presentation, and an article that cites to his work.

The Petitioner maintains that he is employed at "one of the top research hospitals in the United States," that he has presented his findings at international conferences, and that his published work has been cited by others. In letters supporting the petition, medical professors discussed the Petitioner's research aimed at improving conditions in NICUs. For example, [redacted] professor of pediatrics at [redacted] described the Petitioner's work to improve "the mental health outcomes of the mothers of infants admitted to the Neonatal Intensive Care Unit." [redacted] stated that the Petitioner authored a study that "showed that there is a high prevalence of mental health problems, like Depression, Anxiety and Stress, in the family members of the infants

admitted to the NICU." While noted that the Petitioner "established a peer to peer support group" composed of parents whose infants were admitted to the NICU at he did not offer specific examples of how the Petitioner's findings have generated positive interest among relevant parties, have been implemented in other medical centers' NICUs, or otherwise reflect a record of success in his area of research.

In addition, associate professor of pediatrics at stated that the Petitioner's findings in the "revealed that apnea and hypothermia were the key risk factors for actual life-threatening neonatal infections." further indicated that "[a]s a result of this ground-breaking research, neonatologists can initiate essential and potentially life-saving antibiotic treatment earlier in its course, potentially reducing both significant morbidity and mortality in these tiny babies." Furthermore, professor of pediatrics and neonatology at discussed how the Petitioner's research "showed that there is a significant difference between manually and automatically recorded pulse oximetry values in preterm infants who are requiring oxygen." added: "This is an important finding in the context of how we manage patients in the NICU, because it suggests that the use of automated oxygen administering systems for infants on oxygen might be able to change the survival and disease burden of those patients."

The record demonstrates that the Petitioner has conducted, published, and presented research during his medical training. 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 or her proposed research. 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 has not shown that his research has been frequently cited by independent neonatologists or otherwise served as an impetus for progress in the field, that it has affected clinical practice, or that it has generated substantial positive discourse in the broader medical community. For instance, the record includes only one article that cites to the Petitioner's work. Specifically, the article references his finding that "[a]n acute increase in central apnea is one of the most common signs of late-onset septicemia in preterm infants in the NICU." Nor does the evidence otherwise demonstrate that his work otherwise constitutes a record of success in his area of research.

With respect to the Petitioner's peer review activities, his response to our RFE includes a letter and emails confirming that he reviewed manuscripts in 2016 and 2017 for and In addition, he submits a 2017 letter appointing him as an "Academic Editor" for The Petitioner's peer review activities and editorial appointment post-date the filing of the Form I-140 on June 26, 2015. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). Regardless, the Petitioner has not documented the reputation of the aforementioned journals or offered other evidence demonstrating that his past history of peer review

rises to the level of rendering him well positioned to advance his proposed research endeavor. The record does not show that the Petitioner's occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance neonatology research.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rise to the level of rendering him well positioned to advance his proposed endeavor of researching conditions that afflict premature infants in NICUs. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

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

The Petitioner asserts that the labor certification process would not produce "an adequate substitute" with his level of professional qualifications. He contends that "[a] labor certification tests the U.S. labor market for a minimally qualified employee" and that such an individual "is not going find new solutions to existing problems."[5] The Petitioner further maintains that "[w]hen human lives are at stake, the best and the brightest are needed."

We note that the [redacted] recently filed a Form ETA 9089, Application for Permanent Employment Certification, on the Petitioner's behalf and that the form was certified by the U.S. Department of Labor on September 26, 2016.[6] Accordingly, the record does not demonstrate that obtaining a labor certification would be impractical, nor does it support the claim that in his case it is necessary, and beneficial to the United States, to waive the requirement of a job offer, and thus of a labor certification. While some of the Petitioner's knowledge and experience may exceed the minimum requirements for his occupation and therefore could not be easily articulated on an application for labor certification, he has not demonstrated, as claimed, that he presents benefits to the United States through his proposed endeavor that outweigh those inherent in the labor certification process. The Petitioner has not shown an urgent national interest in his research, nor has he demonstrated that he offers contributions of such value that, over all, they would benefit the nation even if other qualified U.S. workers were available. In sum, the Petitioner has not demonstrated 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. The Petitioner therefore has not established that he meets the third prong of the *Dhanasar* framework.

[5] The labor certification process is designed to certify that a foreign worker will not displace nor adversely affect the wages and working conditions of U.S. workers who are similarly employed. Job requirements must adhere to what is customarily required for the occupation in the United States and may not be tailored to the foreign worker's qualifications or unduly restrictive, unless adequately documented as arising from operational necessity.

[6] Subsequently, his employer filed a Form I-140 in his behalf that was approved by USCIS on October 27, 2016.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-*, ID# 287483 (AAO May 19, 2017)