U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-

DATE: SEPT. 21, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a computational mathematics researcher, 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 Petitioner appealed the matter to us, and we dismissed the appeal. [1]

The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief stating that he is providing new facts to establish eligibility and that our previous decision was incorrect based on the previous record.

Upon review, we will deny the motion.

[1] *See Matter of S-S-*, ID# 119901 (AAO May 11, 2017). In adjudicating the appeal, we noted that in December 2016, 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*) and set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884. Accordingly, in January 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 submitted a brief and additional documentation, asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

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. *See* section 203(b)(2) of the Act. 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.[2] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

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 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,

[2] 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*).

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.[3]

II. ANALYSIS

In denying the Petitioner's appeal, we found that he had met the first prong of the framework set forth in *Dhanasar* based on his proposed research,[4] but that he had not satisfied the second or third prong. The Petitioner filed the current combined motion to reopen and reconsider contending that our previous decision was erroneous. He claims on motion that he provided sufficient evidence establishing that he has met the second and third prongs of the *Dhanasar* framework, and that the AAO based its decision on an incorrect application of law or policy.

A. Well Positioned to Advance the Proposed Endeavor

Under the second prong of the *Dhanasar* framework, a petitioner must establish that he or she is well positioned to advance the proposed endeavor. We previously determined that the Petitioner had not done so. The first issue before us on motion is whether the Petitioner has demonstrated that he meets the requirements set forth under this prong through new evidence and information, or that our previous determination was incorrect based on the previous record before us.

In our prior decision, we found the Petitioner had not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rises to the level of rendering him well positioned to advance his proposed research endeavor of developing models to capture and analyze failure mechanisms of safety and economically critical infrastructure systems. The record included evidence of the Petitioner's graduate research along with information describing a project in which he developed software tools that were used by cancer researchers in a study of [redacted] sequence alignment. We concluded that the Petitioner had not provided sufficient evidence that his graduate research has been frequently cited by independent scholars or otherwise served as an impetus for progress in the field, or that it generated substantial positive discourse in the broader academic community. We noted that, while the record includes evidence that the Petitioner's work has been viewed online 113 times, there is little evidence that his findings have been implemented, utilized, or applauded by those viewing it. On appeal, he claimed that his field was too narrow to be frequently cited; however, he did not offer comparative statistics explaining how often other engineering researchers are cited to support this assertion. Moreover, we noted that the record does not indicate that his findings have been employed by government or private sector entities, or that his work has affected specific infrastructure development or failure mechanism projects.

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] We noted that the Petitioner provided several offer letters from public and private sector employers, but that he did not fully explain whether he intends to accept any of the researcher positions described, what his proposed duties may be, or whether his proposed endeavor would change if he moved from academia to the private sector. Nonetheless, to the extent that the Petitioner proposed to conduct engineering research related to transportation and infrastructure systems, we found the evidence sufficient to demonstrate that such research is of national importance.

In his motion to reopen, the Petitioner indicates that his teaching experience was not considered in determining his eligibility under the second prong. He states that he served as a teaching assistant at [redacted] and [redacted] and that this experience renders him well positioned to advance his proposed endeavor. While the Petitioner claims that he has "tremendous teaching potential," and we recognize that often academic positions require both teaching and research responsibilities, the Petitioner must establish that he is well positioned to advance the endeavor found to be nationally important. As we stated in our prior decision, the Petitioner's proposed teaching activities do not meet the "national importance" element of the *Dhanasar* framework's first prong because they would not impact the field more broadly than his particular students or school.[5] Our finding that the Petitioner meets the requirements of prong one is limited to his proposed endeavor of advancing research into failure mechanisms within infrastructure development. In this case, he has not shown that any new facts provided establish he is well positioned to advance his proposed research endeavor. Accordingly, the motion to reopen does not demonstrate the Petitioner's eligibility under this prong.

In his motion to reconsider, the Petitioner asserts that our conclusion was based "on factors not considered in deciding the second prong." He contends that he is eligible under the second prong because the evidence demonstrates the requisite level of interest from potential customers, users, investors or other relevant entities or individuals. He points to a number of interview appointments from potential employers interested in "leveraging and utilizing" his "skills and advanced knowledge in linear and nonlinear controls, systems, mathematical modeling, machine learning, optimization, numerical methods, and computational mathematics." While we agree that job offers in a field of endeavor can, in some instances, be reflective of a record of success and interest from relevant parties, here the Petitioner has not shown that his potential employers are interested in specific and notable accomplishments he has made. We find no error in our previous determination that the record does not show a record of success or interest rising to the level of rendering him well positioned to advance his proposed research.

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. Here, arguments the Petitioner offers on motion do not establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision.

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

As explained above, 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. Here, the Petitioner contends that it would be impractical for him to obtain a labor certification. He does not, however, provide evidence or information to support his claim that our

[5] 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. *See Dhanasar*, 26 I&N Dec. at 893.

previous determination was erroneous, nor did he identify new facts establishing his eligibility under this prong.

III. CONCLUSION

The Petitioner has not offered new facts demonstrating his eligibility for the benefit sought, nor has he established that our previous decision was incorrect. 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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-S-*, ID# 702214 (AAO Sept. 21, 2017)