U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-K-

DATE: AUG. 23, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a researcher in the field of electrical engineering, 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 Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts 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. –

> (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.
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> (B) Waiver of job offer –
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> (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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[1] *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

[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*).

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

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] 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. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner is currently a researcher and Ph.D. student at the [redacted] focusing his work in the area of soft [redacted] toward the goal of developing soft wearable sensing technology for healthcare and other applications. Specifically, by using soft lithography technology, the Petitioner proposes to replace conventional rigid components with soft components to produce wearable electronics that will comfortably move with the wearer. The record includes letters of support indicating that the Petitioner's proposed soft wearable electronics have a variety of healthcare applications. For example, [redacted] of the [redacted] notes that the Petitioner's work with sensing technology using liquid metal "can be integrated into the next generation of electronic devices, making [redacted] detection methods easy for the general population to use in order to detect harmful chemicals in the air and water." Accordingly, we find that the Petitioner's proposed work has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. He submitted several articles about the [redacted] for [redacted] a consortium of companies and universities funded in part by the [redacted] which focuses on advancing flexible and wearable electronic devices. In addition, [redacted] Dean of the College of Engineering at the [redacted] states that the Petitioner's proposed work "has significant ramifications for the health industry, as his discoveries benefit research concerned with the detection and monitoring of human disease."

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

[3] The Petitioner submitted an educational evaluation which establishes that he holds the equivalent of a master of science degree in mechanical engineering from an accredited university in the United States. *See* 8 C.F.R. § 204.5(k)(3)(i)(A).

The Petitioner has also submitted evidence which demonstrates that the benefit of his proposed research in soft has broader implications, as the results are disseminated throughout the field through scientific journals and conferences. Accordingly, as the Petitioner has demonstrated the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his academic credentials, published research articles, conference presentations, patent applications, reference letters, and citation reports. The Petitioner also noted in his appeal brief that he provided evidence relating to how he intends to advance his proposed endeavor in the United States. This includes an emailed invitation to join the editorial board of the as well as another emailed invitation to contribute a chapter for a proposed book titled As the record does not establish that either of these invitations relates to the development of , the Petitioner's proposed endeavor, and he has not indicated his intention to accept either invitation, this evidence does not support his positioning to advance his proposed endeavor.

The brief also draws attention to two letters, one from the Petitioner's Ph.D. advisor, who indicates that he "would very much welcome [the Petitioner] in my research group subject to available funding."[4] The other, from of the states that he met the Petitioner at a seminar and discussed "possible collaboration." The Petitioner has not established that these letters represent a sufficient level of interest from relevant parties rendering him well positioned to advance his endeavor.

The Petitioner submitted several other reference letters in which the writers describe his research projects and their potential applications.[5] For example, states that based upon the Petitioner's research, "manufacturers can create lightweight, stretchable, wearable electronics used to monitor fitness activities and health." of writes that the Petitioner's "trailblazing methods were capable of producing scalable, dense, soft circuits that were able to withstand mechanical forces without losing their functionality."

However, other experts provided a different picture of the advancements made by the Petitioner's work, indicating that they have made a smaller impact on the development of states that the Petitioner's research in soft wearable electronics "can be further expanded on by other researchers to enhance the manufacturing processes rooted in soft lithography. Just as importantly,

[4] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

[5] Although not all of the letters are discussed here, all were thoroughly reviewed for purposes of this appeal.

[the Petitioner's] research development guides the field towards effective realization of usable soft electronics." of writes in his letter that based upon the Petitioner's research, "researchers can expand on [the Petitioner's] technique to progress the development of wearable technology."

In support of these letters, the Petitioner points to his publication record, and the number of times other researchers in his field cited to his published work, asserting that he has a record of success that meets this prong of the *Dhanasar* framework. However, the Petitioner did not provide comparative statistics for other researchers in his field, which would indicate whether his research constitutes a record of success sufficient to meet this prong, as well as provide a gauge of the level of interest from others in his field and support the letters' statements regarding the significance of his work.[6]

In addition, while the Petitioner submitted partial copies of published articles written by other researches which cited his work, many of these citations were to his article concerning the cooling of power transformers, which he has not established is related to his proposed endeavor of developing Further, the articles which cite to his published work in this area that were submitted by the Petitioner indicate that his work represents one of several approaches being investigated which propose the use of liquid metal to create soft electronic circuits, rather than the one method which will ultimately lead to their production.

The record demonstrates that the Petitioner has conducted, published, and presented research during his career. 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 or coauthored patents 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 researchers or otherwise served as an impetus for significant progress in the field, or that it has generated substantial positive discourse in the broader soft community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research.

On appeal, the Petitioner refers to a 2002 AAO non-precedent decision concerning a researcher in the field of liquid crystals who provided evidence of 16 independent citations to his work. However, we note that the referenced decision was adjudicated under a prior framework and the Petitioner has

[6] The Petitioner provided a citation report from in response to the Director's request for evidence which showed that his work had been cited on 50 occasions. However, we note that 22 of those citations were to a paper written by the Petitioner about radiators in electrical power transformers, an area of engineering research which the record does not establish relates to his proposed endeavor. The Petitioner's remaining publications were each cited fewer than 6 times.

not explained the relevance of the number of citations to a researcher in a different field from his own, more than 15 years ago, in analyzing his own record of success. Moreover, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable (as is the case here) based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

The Petitioner also offers evidence that he is named as a co-inventor on three patent applications filed in South Korea. Two of these applications concern cooling methods for power transformers, while the third more closely parallels the Petitioner's proposed work in the development of soft The Petitioner provides reference letters from experts, including those mentioned above, which describe his research and its results in great detail, but these letters do not indicate that the innovations in the patent more closely related to his proposed endeavor has been commercialized or implemented in the his field, or have otherwise generated positive interest among relevant parties at a level demonstrating that he is well positioned to advance his proposed endeavor. Accordingly, considering all of the issues detailed above, we find that the Petitioner does not meet the second prong of the *Dhanasar* framework.

C. 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 claims that he is eligible for a waiver because a labor certification would not account for his education, skills, and expertise in his field. In addition, he asserts that his contributions would be of such value to the field in the United States that he would benefit the United States despite the availability of qualified workers. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

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 that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID# 1480717 (AAO Aug. 23, 2018)