U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9825328

Date: JAN. 27, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an electrical engineer, 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).

The Director of the Nebraska Service Center denied the petition, concluding 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 the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

(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 set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], 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.

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

[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*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] 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 regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien." The denial decision stated that the Petitioner did not provide "a properly completed Application for Alien Employment Certification (Form ETA-750B) or Application for Permanent Employment Certification (ETA Form 9089), Parts J, K, and L. Therefore, since the petitioner did not submit this required evidence, USCIS must deny the Form I-140." With the petition, however, the Petitioner offered a properly signed and executed Form ETA-750B. Accordingly, the Director's finding on this issue is withdrawn.

At the time of filing, the Petitioner was working as a "Vice President in Technology" for [redacted].[5] His responsibilities include "design and development of a high-capacity [redacted] and transportation system to inject reference data to the low-latency platform of [redacted]). The Petitioner previously served as a research assistant at [redacted] University from September 2012 until October 2017.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research aimed at "the development of frameworks for computer networks to improve caching, traffic engineering, and other real-world applications of advanced algorithms." He stated that his proposed work "contributes to technological developments pertaining to network performance, social media and entertainment consumption, content delivery, autonomous vehicle systems, and other aspects of modern-day network-based devices." The Petitioner further explained that his proposed research involves "optimizing [redacted] algorithms [redacted] for extremely latency-sensitive applications," "applying combinatorial optimization techniques to jointly optimize [redacted] strategies in content centric networks," and "applying network coding to peer-assisted content delivery networks."

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

[4] The Petitioner received a Ph.D. in Electrical Engineering from [redacted] University in December 2017.

[5] 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 his current position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit and national importance. For example, the record includes a letter from [redacted] professor at [redacted] University, stating that the Petitioner's proposed research stands to benefit "the progression of the overall field and technological advancements in the United States." In addition, the Petitioner offered a letter from [redacted] vice president of [redacted] for [redacted], asserting that the Petitioner's undertaking stands to "have a highly significant impact on the U.S. [redacted] market." Furthermore, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed [redacted] optimization research, he has established 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 curriculum vitae, academic credentials, published articles, conference presentations, U.S. patent application, peer review activity for the Institute of Electrical and Electronics Engineers (IEEE), and participation in a project funded by the [redacted] "Innovation Corps Program." He also offered evidence of articles that cited to his published work, and letters of support discussing his graduate work under the guidance of [redacted], a professor at [redacted] University, and [redacted], a former fellow with [redacted][6]

The Petitioner contends on appeal that his education, research experience in his specialty, published and presented work, citation evidence, U.S. patent application, recommendation letters from others in the field, peer review service for IEEE, and [redacted] research funding demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's graduate research projects at [redacted] University and [redacted].[7] For example, regarding the Petitioner's work involving utilization of [redacted] networks, [redacted] stated that the Petitioner developed "a network model in which [redacted] have the capability to temporarily store popular content so that the requesting [redacted] are able to retrieve this content from these temporary [redacted]." In addition, [redacted] indicated that the Petitioner devised "a second model that is primarily meant to serve more densely populated urban areas by incorporating [redacted] into the network." While [redacted] asserted that the Petitioner's [redacted] network "models, combined with his [redacted] significantly reduce network delays while simultaneously maximizing throughput," he did not provide specific examples indicating that these models have been implemented in the digital communications industry or otherwise constitute a record of success in the field.

[6] [redacted] stated: "I first met the petitioner through his Ph.D. advisor, [redacted] . . who recommended him as an extremely capable and accomplished student. Thus, I recruited him into my research group as a Ph.D. intern in 2015 where he worked with our team on projects related to [redacted]"

[7] While we discuss a sampling of these letters, we have reviewed and considered each one.

With respect to the Petitioner's research at [redacted] relating to [redacted] congestion control schemes for [redacted], [redacted] indicated that he and the Petitioner "developed a [redacted] algorithm, dubbed [redacted], to efficiently and fairly utilize all the available capacity located along the paths which connect the end user to intermediary routers that are working to cache the requested content object." [redacted] further stated that "[t]hrough extensive network simulations, [the Petitioner] has demonstrated that his algorithm is superior to its predecessors," but he does not offer examples of how the Petitioner's [redacted] algorithm has been implemented, utilized, or applauded in the digital communications industry.[8]

Likewise, [redacted] associate professor at [redacted] University, asserted that the Petitioner's [redacted] algorithm is capable of achieving [redacted] fairness while maintaining [redacted] completion times and [redacted] link utilization." Additionally [redacted] noted that he cited to the Petitioner's work in a paper, entitled [redacted]."[9] [redacted]'s paper, however, does not distinguish or highlight the Petitioner's work from the 18 other articles he cited to in his paper.

Regarding the Petitioner's overall citation record, [redacted], assistant professor at University of [redacted] indicated that the Petitioner's "work has been cited over 30 separate times, a clear indication that his expertise is recognized by fellow researchers." As it relates to the citation of the Petitioner's work, the record includes January 2019 information from Google Scholar indicating that his three highest cited articles, entitled '[redacted]' and '[redacted]' each received 17, 6, and 5 citations, respectively. The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors. Moreover, in response to the Director's request for evidence (RFE), the Petitioner submitted an updated Google Scholar list (dated October 17, 2019) reflecting a moderate increase of citations to his individual articles. He did not demonstrate how many of these additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the engineering research field. The Petitioner claimed that his paper coauthored with [redacted] and others, entitled '[redacted]' ranked among "the top 10% most-cited articles published in Engineering in 2016" based on the number of citations it has received (17) since that time. The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. In addition, the initial Clarivate Analytics citation data is from February 2018, and therefore does not capture citations that occurred after early 2018, while the Petitioner's first Google Scholar citation report is

[8] The record contains a U.S. patent application, entitled '[redacted]' that was published on December 14, 2017. This published patent application filed by [redacted] lists [redacted] the Petitioner, and two others as inventors. While issuance of a patent recognizes the originality of an invention, the Petitioner has not demonstrated the significance of his innovation in the field.

[9] The record includes a copy of [redacted]'s paper in which he references the Petitioner's [redacted]" but concludes that the Petitioner and his coauthors "don't consider the effects of [redacted] and assume that the transfer path is constant during the transmission, which may be not practical."

dated January 2019.[10] Likewise, the Clarivate Analytics citation data offered in response to the RFE is from February 2019, and therefore does not capture citations that occurred after early 2019, while the Petitioner's second Google Scholar citation report is dated October 2019. Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

Additionally, the Petitioner presented an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." The Petitioner's field of electrical engineering, however, does not fall under "the natural and life sciences." Moreover, with regard to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation."

The Petitioner's response to the Director's RFE included June 2019 information derived from "Microsoft Academic" that compares his citation and publication counts to those of other researchers in the areas of [redacted]." Again, the Petitioner did not indicate whether he factored in any self-citations in compiling his percentile rankings from Microsoft Academic. Moreover, the "Date of Collection" of the percentile rankings (June 27, 2019) post-dates the filing of the petition, and therefore the Petitioner has not shown that the 53 Google Scholar citations used in the Microsoft Academic percentile calculation occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Further, as it relates to the Petitioner's education, while his Ph.D. from [redacted] University renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. 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." *Id.* 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.

[10] A webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

Regarding his peer review activity, the Petitioner provided emails thanking him for reviewing one manuscript submitted to *IEEE/ACM Transactions on Networking* and another manuscript submitted twice to *IEEE Transactions on Wireless Communications*. The Petitioner, however, has not demonstrated that his 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 his research endeavor.

The Petitioner also asserted that he has received funding for his research from the [redacted] "Innovation Corps Program." The record includes a July 2016 email from the [redacted] program director to [redacted] informing him that his "team has made the final cut" to submit an "I-Corps Proposal." In addition, the Petitioner provided a January 2019 letter from [redacted] stating that although the Petitioner was an "instrumental" part of the I-Corps project team, he "is not listed as the direct recipient of this funding." In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than [redacted] was mainly responsible for obtaining [redacted] funding for their research project.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies at [redacted] University, internship with [redacted], and employment with [redacted] 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 demonstrated that his published and presented work has served as an impetus for progress in the electrical engineering field or that it has generated substantial positive discourse in the digital communications industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to caching optimization and traffic engineering. 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.

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 due to the impracticality of labor certification, his expertise in the field, and the importance of his research. 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 second prong of the *Dhanasar* analytical framework, we conclude 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.