U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12796399

Date: JUNE 28, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a materials scientist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[1] 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, regarding 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, the factor(s)

[1] *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).

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 record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] 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 Petitioner underwent postdoctoral training at [redacted] University and then at [redacted] University, [redacted] New York. The Petitioner seeks employment as a research assistant professor at [redacted] where he "proposes to continue his work on chemical [redacted] for [redacted] manufacturing and various fundamental principles including surface chemistry, colloidal chemistry, and electrochemistry." The [redacted] process is used to prepare [redacted] surfaces in data storage devices such as flash drives and memory cards.

The Director determined that the Petitioner satisfied the elements of the first prong of the *Dhanasar* framework, but not the second prong (showing him to be well positioned to advance the proposed endeavor). The Director stated no conclusion regarding the third prong.

The Director devoted three paragraphs of the denial notice to the second *Dhanasar* prong. In the first paragraph, the Director described the proposed endeavor and listed the types of evidence submitted to support the petition. In the second paragraph, the Director summarized recommendation letters in the record and then stated:

> At the time of filing the beneficiary's publications had received 152 citations, including InCites Essential Science Indicators and notable citations. While the beneficiary has published scholarly articles which have received some attention from the field, the comparative ranking of a paper's citation rate does not automatically demonstrate a record of success in the field.

Later in the decision, the Director stated: "The beneficiary has not shown that his research has been frequently cited by independent scientists. . . . Rather, the beneficiary's findings were utilized as background information to the [citing] authors' papers." These two quoted passages appear to be inconsistent with one another. The latter passage suggests that the Petitioner did not provide comparative citation data, while the former passage appears to acknowledge that citation data while assigning it minimal weight.

The Director also gave minimal weight to an emailed reference to a technical transfer agreement, stating that the record lacks further corroboration of the agreement. The Petitioner, on appeal, correctly observes that the email message in question states that, for reasons of confidentiality, further details and documents are not available. More significantly, the Director does not explain how this agreement would have had greater weight if the record had included such corroboration.

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

[3] The Petitioner received a Ph.D. in energy engineering from [redacted] University [redacted] South Korea, in 2017.

Commercialization of industrial technology does not inherently establish eligibility for the national interest waiver.

The Director then stated:

> The record demonstrates that the beneficiary has conducted, published, and has had citations to his 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 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 beneficiary has not shown that his research has been frequently cited by independent scientists or otherwise served as an impetus for progress in the field, that it has affected his field of endeavor, or that it has generated substantial positive discourse in the broader material science community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research. Rather, the beneficiary's findings were utilized as background information to the authors' papers. As the record is insufficient to demonstrate that the beneficiary is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the Dhanasar framework.

On appeal, the Petitioner asserts that the Director "offered nothing more than a vague summary of the evidence of record coupled with a boilerplate assessment that is in no way specific to [this] petition. There is no discussion or explanation of which evidence the [Director] considered relevant, probative, or credible."

We agree with the Petitioner's assessment of this part of the denial notice. The Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). We do not necessarily find that the Director came to the wrong conclusion about the second *Dhanasar* prong, but the Director did not adequately explain how the evidence in the record led to that conclusion. This lack of detail in the denial notice did not give the Petitioner a sufficient opportunity to appeal the decision as effectively as he otherwise might have done.

III. CONCLUSION

The Director's second prong determination was the sole ground for denial; the Director granted the first *Dhanasar* prong and did not reach a determination on the third prong (concerning balancing factors to determine whether the waiver would benefit the United States). Because the Director has not adequately set forth grounds for denying the petition based on the second prong, we will remand this matter back to the Director for further consideration and a more detailed explanation for the decision (and, if warranted, an initial determination on the third prong).

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.