U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9505533

Date: MAY 10, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a materials chemistry 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).

The Director of the Texas Service Center approved the immigrant petition, but subsequently issued a notice of intent to revoke (NOIR) and later revoked the approval of the petition, concluding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if

> unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.[1]

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.
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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 (AAO 2016).[2] *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[3], 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

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[1] *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Upon the proper issuance of a notice of intent to revoke for good and sufficient cause, the petitioner bears the burden of proving eligibility the requested immigration benefit. *Id.* at 589.

[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*).

[3] *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).

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.[4]

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, 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.[5]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[6] 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.

At the time of filing, the Petitioner was pursuing a Ph.D. in Chemistry at [redacted] University [redacted] His research responsibilities included developing "[redacted] polymers, derived from natural sources, such as [redacted] and methods of [redacted]

[4] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

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

[6] The Petitioner received a Master of Science degree in Chemistry from the University of [redacted] in December 2015.

leading to [redacted]." In response to the Director's NOIR, the Petitioner provided a June 2019 letter from [redacted], a professor at University [redacted] stating: "Since May of 2019, [the Petitioner] is employed in the Department of Mechanical and Industrial Engineering at [redacted] where [he] started his research under my supervision in conjunction with pursuing his Ph.D. degree in Mechanical Engineering." [redacted] indicated that the Petitioner's work at [redacted] involves "the design of [redacted] biodegradable polymers and nanomaterials. . . . [The Petitioner] is also researching the synthesis of novel nanoparticles and nanomaterials for water remediation applications."[7]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research involving "materials chemistry with applications in energy and water remediation." He asserted that his proposed research is aimed at developing smart polymers for water remediation, [redacted]

In the decision revoking the approval of the petition, the Director determined that the Petitioner had demonstrated both the substantial merit and national importance of his proposed endeavor. The record supports this conclusion. For example, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. Accordingly, we agree with the Director that the Petitioner 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, and peer review activity. He also offered evidence of articles that cited to his published work, a statement regarding his future plans, and letters of support discussing his graduate research. The Director concluded that the Petitioner's published work, citation evidence, future plans, and letters of support were not sufficient to demonstrate that he is well positioned to advance his proposed endeavor.

The Petitioner contends on appeal that the Director erred in stating that the record did "not include [the Petitioner's] plan for future activities beyond his statement of June 14, describing research activities that correspond with his pursuit of a Ph.D."[8] The Petitioner references his June 14, 2019 statement outlining his "Future Research Plans" and claims that this statement "provided an

[7] 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 research positions 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.

[8] The Director further stated: "[The Petitioner] does not describe how he intends to continue his work in the United states beyond finding employment once his academic career is over. Furthermore, the record holds no correspondence from perspective/potential employers, clients or customers. The record also lacks an indication [the Petitioner] has prospective financial support; he himself has received no grants nor has [he] provided copies of contracts, agreements, or licenses resulting from [his] proposed endeavor."

exhaustively detailed description of his future research plans beyond his academic pursuits." The Petitioner's June 2019 statement, however, did not specify whether the "Future Research Plans" he outlined related to his ongoing graduate research at [redacted] or his postdoctoral research plans. Regardless, even if we concluded that the Director's analysis was problematic, this issue does not undermine the remaining bases for revocation.

Additionally, the Petitioner asserts that the Director erred in not considering evidence that post-dates the filing of the petition. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The Petitioner further argues that his research experience, published work, citation evidence, recommendation letters from others in the field, and peer review service 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 research projects at University [redacted], [redacted] and [redacted].[9] For example, regarding the Petitioner's work involving absorbents of [redacted] frameworks containing [redacted] nanostructures for water remediation, [redacted], assistant professor of chemistry at [redacted] stated that the Petitioner "fabricated a series of [redacted] composites" to absorb a [redacted] pollutant. While [redacted] asserted that this work "has delivered critical insight to the materials chemistry community," he did not provide specific examples indicating that the Petitioner's novel absorbents have been implemented in the [redacted] remediation industry or otherwise constitute a record of success in the field.

With respect to the Petitioner's research aimed at improving the "efficiency of [redacted] via an optimization of the main [redacted] s performance," [redacted] professor at [redacted] indicated that the Petitioner "enhanced the overall fabrication process of [redacted] by optimizing the [redacted] wherein uniform thin layers of [redacted] with high quality were adhered to the conductive substrate." [redacted] further stated that that the Petitioner's method "substantially improved energy conversion efficacy," but he did not offer examples of how the Petitioner's findings have been implemented, utilized, or applauded in the materials chemistry field.

Likewise, regarding the Petitioner's work relating to optimizing [redacted] activity, [redacted] professor at [redacted] University, asserted the Petitioner showed that by reducing "the band gap of the semiconductor via [redacted] was able to absorb what was visible of the [redacted] In addition, [redacted] stated: "By showing that [redacted] via combinatorial [redacted] process indeed improves the

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

activity of this novel [the Petitioner] has taken a critical step towards securing the environmental application of" did not provide specific examples indicating that the Petitioner's work has affected the industry, has served as an impetus for progress or generated positive discourse in the materials chemistry field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

Furthermore, professor of physics at the University, indicated that the Petitioner "has developed improved through his focus on the materials utilized in He optimized the deposition technique in order to produce uniform, thin layers over a conductive substrate." further noted that he cited to the Petitioner's findings in a paper, entitled with natural gel polymer as counter-electrode."[10] s paper, however, does not distinguish or highlight the Petitioner's work from the 43 other articles he cited to in his paper.

The record includes additional examples of articles which cited to the Petitioner's work in *Materials Science in Semiconductor Processing*.[11] For instance, he presented an article, entitled " in which the article's authors identified the Petitioner's paper as one of three that showed " While the authors briefly referenced the Petitioner's work, their article does not differentiate his paper from the 48 other papers they cited.

Another article offered by the Petitioner, entitled " indicates that there have been "[n]umerous scientific reports on the This article then points to the Petitioner's paper and two others as examples which showed "that the appears at an approximate temperature range from 300 up to 600 °C." Again, the authors do not distinguish the Petitioner's paper from the 39 other papers they referenced.

As it relates to the citation of the Petitioner's work, the record includes August 2016 information from Google Scholar indicating that his three highest cited articles, entitled ", " " and each received 24, 23, and 20 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 NOIR and in support of the appeal, the Petitioner submitted updated Google Scholar lists (dated June 2019 and November 2019) reflecting an increase

[10] The record includes a copy of s paper in which he references the Petitioner's article in *Materials Science in Semiconductor Processing* and another article by different researchers on the subject of 's paper states: "The method similar to that used by from plants was followed."

[11] Although we discuss representative sample articles here, we have reviewed and considered each one.

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).[12]

Additionally, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the materials science field. The Petitioner claimed that several of his papers ranked among "the top 10% most-cited articles published in Materials Science" based on the number of citations received since their publication. The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. In addition, the Clarivate Analytics citation data is dated January 2015, and therefore does not capture citations that occurred after early 2015, while the Petitioner's Google Scholar citation report is from August 2016.[13] 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.[14] 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."

The Petitioner also 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." While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. 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 NOIR included May 2019 information derived from "Microsoft Academic" that compares his citation and publication counts to those of other researchers in the areas of "Response surface methodology, [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 (May 21, 2019) post-dates the filing of the petition, and therefore the Petitioner has not shown that the 630 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). The Petitioner has not demonstrated that

[12] The record also includes Google Scholar and Scimago rankings listing several of the journals in which the Petitioner has published his work. That a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in the field.

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

[14] Likewise, the Petitioner has not shown that the Clarivate Analytics data provided on appeal is contemporaneous with the Petitioner's November 2019 Google Scholar data.

the number of citations received by his published articles at the time of filing reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

The Petitioner maintains on appeal that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893.

Regarding his peer review activity, the Petitioner provided emails thanking him for reviewing manuscripts submitted to *International Journal of Hydrogen Energy*, *Desalination and Water Treatment*, *Iranian Journal of Polymer Science and Technology*, *Arabian Journal of Chemistry*, *Research on Chemical Intermediates*, *Journal of Industrial & Engineering Chemistry*, *Journal of Renewable and Sustainable Energy*, *Karbala International Journal of Modern Science*, *Chemical Engineering Communications*, *Progress in Photovoltaics: Research and Applications*, *RSC Advances*, and *Materials Science in Semiconductor Processing*. The Petitioner, however, has not demonstrated the stature of these journals. Nor has he shown that his 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 record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies, 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 materials chemistry field or that it has generated substantial positive discourse in the environmental remediation or solar industries. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to smart polymer development. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, we agree with the Director that the Petitioner has not established 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 and the benefits of his proposed 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 revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

ORDER: The appeal is dismissed.