U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10184145

Date: MAY 14, 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 medical scientist, 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 denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner 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 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. . . . the 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 a 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.

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)

[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*).

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 Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Director concluded that the Petitioner's proposed endeavor of conducting research on [redacted] diseases and development of "therapeutic methods with application of [redacted] therapy or [redacted] factors" at the University of [redacted] University of [redacted] or at a "research institute such as [redacted] or [redacted] Medical Center" satisfied the first *Dhanasar* prong because it has both substantial merit and national importance. Upon a review of the record, we agree.[3] However, the Director concluded that the Petitioner did not satisfy either the second or the third *Dhanasar* prongs, both of which are required for eligibility for a national interest waiver.

Examples of evidence that may establish a petitioner is well positioned to advance a proposed endeavor include, but are not limited to, the following:

- The individual's education, skills, knowledge, and record of success in related or similar efforts;
- A model or plan for future activities;
- Any progress toward achieving the proposed endeavor; and
- The interest of potential customers, users, investors, or other relevant entities or individuals.

Dhanasar, 26 I&N Dec. at 890.

The record establishes that the Petitioner possesses education, skills, and knowledge in efforts related or similar to the proposed endeavor. For example, the record contains a copy of a degree certificate for a doctor of philosophy in medicine, awarded to the Petitioner by the [redacted] University. The record also contains evidence of 32 peer-reviewed scientific articles published in medical journals such as the *European Journal of Neuroscience*, *Animal Cells and Systems*, and the *Journal of Neurology & Neurophysiology*, which were co-authored by the Petitioner between 2005 and 2018. The record further contains information about other peer-reviewed articles that have cited the Petitioner's research, which are at a level indicative of a record of success.

The record contains opinion letters from [redacted] a researcher at the [redacted] Hospital, and [redacted] a postdoctoral research associate at the University of [redacted] College of Medicine.

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

[3] Although we may not discuss each document in the record for brevity, we have reviewed the record in its entirety.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The [redacted] letter states, in relevant part, that "among [the Petitioner's] projects, [redacted] from the [redacted] which is such a special technique, could dramatically attenuate phenotypes of [redacted] diseases. This technique led new [*sic*] paradigm to treatment of [redacted] diseases." The [redacted] letter states, in relevant part, that the Petitioner "developed a technology to effectively [redacted] and patented it. If this technology is further developed, it will be applied to the development of an [redacted] kit." However, neither letter elaborates on how the Petitioner's [redacted] technique or technology has advanced [redacted] or [redacted] research. Moreover, the letters speculate that the technique *could* attenuate phenotypes and that the technology will be applied to the development of an [redacted] kit *if* it is further developed, which does not establish that the research the Petitioner has already conducted has affected the field of research. In summation, the opinion letters are not corroborated by evidence that establishes the assertions made about the Petitioner's projects. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795; *Matter of V-K-*, 24 I&N Dec. 502 n.2.

Turning to the Petitioner's model or plan for future activities, as noted above, the Petitioner proposes to continue research and development of "therapeutic methods with application of [redacted] or [redacted] factors" at the University [redacted], University [redacted], or at a "research institute such as [redacted] or [redacted] Medical Center," a continuation of the research work the Petitioner has performed since 2006. On appeal, the Petitioner asserts that "[t]he description record provides details such as when [I intend] to apply, name of job position, prospective employers' name [*sic*], and [my] specific career goal in the United States." However, on appeal the Petitioner resubmits a copy of the letter initially supported in support of the petition, that states, in relevant part, the following:

> If I am granted US [*sic*] permanent resident status, I will continue my research at the University [redacted] or University [redacted] If it is not possible, I will apply for the job to work national [*sic*] renowned research institute such as [redacted] or [redacted] Medical Center, etc[.] in the United States.

Although the Petitioner has established his intention to apply for work if his petition is approved, the record does not demonstrate that any of the entities identified in his proposed endeavor have expressed an interest in the Petitioner or his research.

Relatedly, the record does not establish whether potential customers, users, investors, or other relevant entities or individuals, such as fellow researchers, are interested in the Petitioner conducting the research he describes in the United States. As noted, the opinion letters speak favorably of the Petitioner's research; however, they are in the context of co-authors who wrote articles with the Petitioner. Specifically, although the [redacted] letter opines that "[the Petitioner's] passion and challenge

will make important contributions to develop drug [*sic*] for [redacted] disorders," and although the [redacted] letter opines that "[the Petitioner] will make significant contribution [*sic*] to the United States through his scientific expertise in the field of [redacted] and [redacted] research," the letters do not assert that the authors are interested in such a drug as potential customers, users, investors, or fellow researchers.[4]

On appeal, the Petitioner asserts that "[the Petitioner] has not been received [*sic*] any job offer from U.S. employer [*sic*] which is **NOT** required pursuant to [section 203(b)(2) of the Act]" (emphasis original). We acknowledge that a job offer is not required for a national interest waiver; however, evidence of whether a petitioner has received interest from a potential customer, user, investor, employer, or other relevant entities or individuals is a factor in determining whether a petitioner is well positioned to advance a proposed endeavor. Relatedly, with respect to the Petitioner's statements about obtaining a research position at a U.S. university or research institute, the record does not contain documentation from any such organization identifying the specific research projects he intends to pursue on the organization's behalf. Without sufficient evidence demonstrating the means or financial support to undertake his proposed [redacted] research in the United States, the Petitioner has not shown that his plan for future activities renders him well positioned to advance his proposed endeavor.

In summation, in consideration of the record in its entirety, the Petitioner has not established that he is well positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] We note that [redacted] is a postdoctoral research associate at the University of [redacted] one of the Petitioner's proposed employers. However, [redacted] does not express the opinion that the University of [redacted] is interested in the Petitioner's proposed endeavor, nor does [redacted] appear to have the authority to do so in the capacity of a postdoctoral research associate.