In Re: 22993490   Date: NOV. 30, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer scientist and instructor, 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 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 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. –
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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.

(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.

Furthermore, 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 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)

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[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).

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 concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the issue to be determined on appeal 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 agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

At initial filing, the Petitioner provided a statement indicating:

> During my doctoral study at⎵⎵⎵⎵⎵⎵⎵⎵⎵⎵in the United States, I have been consistently engaged with Machine Learning and Graph Mining with some of the brightest professors in that area of research. My goal in research is to advance the field of sensor network and machine learning to produce reliable predictions. My past experience was in the area of prediction tasks for sensor network applications such as activity recognition for⎵⎵⎵⎵⎵⎵⎵⎵and tremor severity prediction⎵⎵⎵⎵⎵with positively impacted the United States. I am currently helping my former Ph.D. advisor . . . on⎵⎵⎵⎵⎵⎵⎵using my expertise and experience of Machine Learning and Graph mining for geospatial data to improve accuracy of⎵⎵⎵⎵prediction, to find underlying reasons, and to propose solutions for⎵⎵⎵⎵⎵⎵.
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> Along with this research endeavor which I plan to continue, I look forward to disseminating my knowledge to build experts and skill computer scientists of next generation in the United States through teaching. To fulfill that vision, I already taught "Introduction to Machine Learning" course of⎵⎵⎵⎵⎵at⎵⎵⎵in 2020 Spring. Currently, I also have a job offer to teach at⎵⎵⎵for Fall 2020 that will fulfill the teaching part of my endeavor . . . .

In addition, the cover letter accompanying the petition claimed that the Petitioner "has two primary endeavors that she is pursuing simultaneously." Specifically, 1) "[e]xpanding on her already substantial research in the field of Artificial Intelligence (AI)," and 2) "[d]isseminating her knowledge of machine learning to the next generation of American students to enable that generation to keep America competitive in the field of AI."

As it related to her research, the Petitioner referenced an article claiming from Netgov.com relating to former Attorney General William Barr commenting on the dangers of American companies operating in China. The Petitioner, however, did not submit the article; and therefore, we will not consider it. Further, the Petitioner pointed to reference letters from⎵⎵⎵⎵⎵⎵and⎵⎵⎵⎵⎵⎵.

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

Both letters provide additional insight regarding the fields of machine learning and graph data mining. For example, [   ] stated:

> This is the first era in human history where the whole human race is connected through billions of sensors and communication devices such as smart phones. Many innovative ideas are emerging how to make sense of the huge amount of data generated by these sensors and smart phones to help individuals better their lives. Through applying Machine Learning algorithms to sensor data, valuable insights can be generated. The technology of machine-learning empowered sensor data has already been proved to be beneficial in [   ] and automated assistance of [   ] [   ] who need assistance with their [   ] Use of this technological breakthrough is going to be critical for the United States in the coming decades.

Moreover, [   ] indicated that "Graph Mining is a sub-field of Artificial Intelligence that deals with developing algorithms to perform Data Mining and Machine Learning tasks on data represented as graphs or networks" and "[t]his is one of the hardest areas in Artificial Intelligence as most problems in this area are computationally extremely difficult to solve."

The first prong relates to substantial merit and national importance of the *specific proposed endeavor*. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner, however, did not offer a specific proposed endeavor as required under *Dhanasar*. Instead, the Petitioner broadly claimed that she plans "to advance the field of sensor network and machine learning to produce reliable predictions." The Petitioner did not further elaborate and explain or identify what type of research she intended to pursue in the fields of sensor network and machine learning. Moreover, the Petitioner indicated her previous research and current volunteer work without discussing her prospective endeavor.

Similarly, although the cover letter broadly asserted that the Petitioner will "expand" on her past AI research, it did not contain specific details, elaborate on prospective research, or differentiate her prior research with her intended research. Likewise, the reference letters pointed to her past and current work without explaining her specific proposed endeavor. For instance, [   ] discussed the Petitioner's dissertation and indicated her current volunteer research with [   ] in developing a method for [   ] and discovering underlying patterns to explain the [   ] Further, [   ] commented on the Petitioner's doctoral research and her development of an automated approach to assessing [   ] patients based on machine learning, as well as her current volunteer collaboration with him on [   ][4]

In addition, in relation to her teaching endeavor, which will be further discussed later, the Petitioner submitted a Non-Tenure Faculty Contract Letter" from [   ] The contract makes no mention of the Petitioner conducting research, let alone any indication of a specific research in the fields of sensor network and machine learning.

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[4] We note that the record contains three additional reference letters submitted at initial filing that similarly comment on the Petitioner's prior work without identifying or discussing her prospective endeavor.

In response to the Director's request for evidence (RFE), the Petitioner referenced the same Netgov.com article and reference letters discussed above. The response letter, however, did not provide any further details relating to a specific proposed endeavor in the fields of sensor network and machine learning. The Petitioner did submit a reference letter from⬚who, similar to the other letters, discussed the Petitioner's previous work. In addition,⬚stated:

> [The Petitioner] and I had a conversation about her devising research projects involving senior students. She is already preparing to advise research projects for senior students as part of our 3-quarter senior project series starting in the fall of 2021. In this way, she will be engaged in research activities while applying for a tenure track assistant professor position at⬚.

⬚did not identify specific research relating to sensor network and machine learning that the Petitioner intended to conduct at⬚ Rather,⬚broadly indicated that the Petitioner would advise research projects for senior students.

Moreover, the Petitioner submitted an article discussing how AI is revolutionizing⬚and an article about innovative⬚tools,⬚technologies, AI-driven solutions, and robotic systems for⬚ While the articles appear to relate to her fields of sensor network and machine learning, the Petitioner did not demonstrate the nexus between her unidentified proposed endeavor and the issues or discussed in the articles. Because the Petitioner did not identify her specific proposed endeavor, she did not establish how her prospective endeavor relates to any of these topics.

In a separate and additional RFE response, the Petitioner submitted supplemental letters from⬚ ⬚and⬚ Similar to the other letters, they discussed the Petitioner's prior research and work without identifying or addressing her specific prospective endeavor.

On appeal, the Petitioner does not establish that she presented a specific proposed endeavor before the Director. Instead, the Petitioner maintains that the Director did not review her reference letters. As discussed, none of the submitted recommendation letters show or identify her specific proposed endeavor. In addition, the Petitioner offers additional letters. However, we will not consider evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide if for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

For the reasons discussed, the Petitioner did not provide a specific proposed endeavor as required under *Dhanasar*. The record does not contain distinct, detailed information explaining the Petitioner's specific proposed endeavor. Instead, the Petitioner broadly claimed that she would conduct research in the fields of sensor network and machine learning. She did not elaborate and articulate, for example, the type of research she intended to pursue. As a comparison, the petitioner in *Dhanasar* demonstrated that he intended to continue research into the design and development of propulsion systems for potential use in military and civilian technologies such as nano-satellites, rocket-propelled ballistic missiles, and single-stage-to-orbit vehicles. *Id.* at 892.

With respect to the Petitioner's proposed teaching duties, while this work has substantial merit, the record does not establish that her instructional work would impact the computer science field or the sensor network and machine learning industries more broadly, as opposed to being limited to her students at ☐ Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's proposed teaching activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

Because the documentation in the record does not show that she qualifies for the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[5]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established that she 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.

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[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).