U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30646279

Date: APR. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an electrical engineering researcher, 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. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify for a national interest waiver, a petitioner must first show eligibility 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates EB-2 eligibility, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States.

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary).

The Petitioner earned a Ph.D. in electrical and computer engineering at the [redacted] in 2013. In 2016, he began working at [redacted] Pakistan, first as an assistant professor and then, starting in 2022, as an associate professor. Also in 2022, he began working for [redacted] in Saudi Arabia, first as a remote consultant and then as a research scientist. The Petitioner's research involves wireless communication, cyber security, and artificial intelligence tools for health care. The Petitioner filed the present petition in March 2023.

On appeal, the Petitioner states: "The Decision in this case is deeply confusing and essentially incoherent. . . . There is virtually *no* discussion of the evidence of record, beyond simply listing some of the evidence . . . , and little to no explanation." A review of the Director's decision shows that discussion moves back and forth between the three prongs of the *Dhanasar* national interest framework, consisting mostly of background statements about that framework rather than a description of the Petitioner's evidence and the required analysis of the strengths and weaknesses of that evidence.

The Director stated several conclusions without explaining how the evidence of record led to those conclusions. For example, the Director stated: "the proposed endeavor has substantial merit, but not national importance as required by the first prong of the *Dhanasar* framework." The decision contains no further merits discussion of the first *Dhanasar* prong. Elsewhere in the decision, the Director briefly listed some of the materials in the record, but did not further discuss any of the submitted evidence or explain how it met or did not meet the requirements of the *Dhanasar* framework.

In a request for evidence, the Director concluded that the Petitioner had established that he qualifies for classification as a member of the professions holding an advanced degree. In the denial notice, the Director stated, without further elaboration: "the petitioner has not established that he qualifies for the requested classification."

The Director must explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). In this instance, the denial notice does not identify the reasons for denial in enough detail to give the Petitioner an opportunity to file a substantive appeal to properly address any denial grounds. Therefore, we will remand the matter in order for the Director to issue a more detailed and cohesive decision on the petition.

Because responsibility for the initial decision lies with the Director, we will not adjudicate the petition in the first instance here. Nevertheless, our review of the record raises issues that warrant attention. An undertaking may have national importance because it has national or even global implications within a particular field. *Matter of Dhanasar*, 26 I&N Dec. at 889. These implications *could* be economic but need not be so. The petitioner in *Dhanasar* established the national importance of his proposed endeavor with evidence of "the potential significance of U.S. advances in this area of research and development." Therefore, when considering whether the Petitioner's proposed endeavor has national importance, the Director should not limit consideration solely to economic factors such as job creation.

As the Petitioner has observed, the *USCIS Policy Manual* has set forth "Specific Evidentiary Considerations for Persons with Advanced Degrees in Science, Technology, Engineering, or

Mathematics (STEM) Fields." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2). These provisions do not guarantee that STEM researchers qualify for the national interest waiver, nor do they diminish the Petitioner's evidentiary burden, but they bear attention and consideration.

The Petitioner stated that he seeks a tenure-track associate professorship at the [redacted] or "a very similar position" elsewhere. In response to a request for evidence, the Petitioner stated that he applied for positions at the [redacted] and, secondarily, at [redacted].[2] The Director must consider whether the Petitioner has established that the [redacted] or any other U.S. university has expressed an interest in hiring the Petitioner in that capacity. Such evidence, or the lack of it, would be directly relevant to *Dhanasar*'s requirement that a petitioner must consider "the interest of . . . relevant entities." *Id.* at 890. The Petitioner asserted that his "proposed endeavor is separate from their proposed employment," but the Petitioner's meaning is unclear; a petitioner cannot self-employ as a tenure track assistant professor. Accordingly, the lack of demonstrated interest from a specific employer, seeking to employ the Petitioner at a level commensurate to the proposed endeavor, may present an obstacle to showing that the petitioner is well positioned to advance that endeavor.

The Petitioner has submitted evidence of substantial activity as a peer reviewer. The Petitioner claimed that "only the most highly esteemed researchers in the field are invited to evaluate the work of their peers." The burden is on the Petitioner to submit evidence to support this claim. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The record shows that the Petitioner served as a peer reviewer as early as June 2010 when he was a first-year graduate student. At that time, he had not yet published any articles of his own. The Petitioner's documented participation in peer review at that very early stage does not appear to be consistent with his claim that peer review is limited to "only the most highly esteemed researchers in the field."

The Petitioner has established that some of his work was funded by the U.S. National Science Foundation. Not all government grant funding is equally persuasive with regard to the second prong of the national interest framework. It is significant that the petitioner in *Dhanasar* "initiated or is the primary award contact on several funded grant proposals and that he is the only listed researcher on many of the grants." *Id.* at 893 n.11.

The Director's decision did not identify specific deficiencies in the record or otherwise explain the specific reasons for denial. Therefore, we will withdraw the Director's decision for the reasons explained above.

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

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[2] The record shows that, in March 2023, the Petitioner applied for a position at the [redacted] as a postdoctoral researcher, rather than a tenure-track assistant professor. The record does not show that the university offered the Petitioner the position. The Petitioner also sent an email inquiry to a professor at [redacted] but the record does not show the Petitioner applied for any position there. Rather, the Petitioner indicated that he might submit a copy of his résumé if the university had an appropriate position available. The Petitioner did not show that any further communication took place.