U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28599551

Date: SEP. 12, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification, as well as a national interest waiver of the job offer requirement attached to this 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 the Petitioner did not establish eligibility under the Dhanasar framework. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider. 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). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner relies on Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) and the 6th volume of USCIS Policy Manual F.5, https://www.uscis.gov/policymanual, among other resources. The Petitioner states our prior decision "misapplied Dhanasar in considering whether [the Petitioner] was well positioned to advance the proposed endeavor . . ." He insists that we did not properly evaluate the evidence of his education, skills, knowledge, and record of success in related or similar efforts; his model or plan for future activities; his progress towards achieving the proposed endeavor; and the interest of relevant parties or individuals in his research. Therefore, he requests that we reconsider his eligibility under prong two of the Dhanasar framework.[1] We incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

Our prior decision states, "the Petitioner indicates that he provided an employment letter from [redacted] University (MU) reflecting that he occupies a research position as a Ph.D. student, and the university

[1] We agree with the Petitioner that the standards of the first preference EB-1 classification should not be applied in this case and are irrelevant in this matter.

intends to hire him as a post-doctoral fellow once he completes his degree. The Petitioner, however, did not show how his current, temporary job and prospective, contingent position well situates himself to advance his proposed endeavor." On motion, the Petitioner emphasizes that his proposed endeavor explanation along with the MU letter constitute a model or plan for future activities that position him well to carry out the proposed endeavor. While we have considered this evidence, we conclude it does not constitute a plan for future activities sufficient to well position the Petitioner to carry out his proposed endeavor of researching MEMS switches.

The MU letter does not appear to be a formal job offer, but rather a particular professor's stated desire to hire the Petitioner. It is not apparent whether Dr. R-A-C- has MU authority to extend a formal offer of employment or the capability to hire the Petitioner. While we agree that the letter evidences a plan for future activities, it does not carry significant evidentiary value, as it is informal, and the job offer is contingent. Furthermore, the Petitioner acknowledged the temporary nature of post-doctoral research positions. Even if the Petitioner had provided evidence of a definitive job or job offer, such evidence would still need to demonstrate how such a plan would advance his proposed endeavor, as opposed to advancing other duties or research areas MU may assign in the context of a temporary position. Similarly, the Petitioner referenced a job offer from [redacted] The record does not include evidence of this job offer, nor did the Petitioner provide details about his work duties at [redacted] such that we could conclude it positions him well to carry out his proposed endeavor research. Although having a job or a job offer is not an eligibility requirement for a national interest waiver, we conclude that the Petitioner has not offered sufficient evidence of the viability of his proposed work such that he has substantiated his claim to be well positioned to advance it.

The Petitioner states that we "dismissed" his evidence and explanation of his peer review activities and improperly determined that these activities did not support a finding that he is well positioned to advance his proposed endeavor. Our prior decision mentions peer review activities, thereby demonstrating our specific consideration of them, rather than a "dismissal" of them. While the Petitioner may emphasize the importance and value of such evidence, we need not assign weight or value to the evidence in the manner advocated by the Petitioner.

To support his assertion that his peer review activities position him well, the Petitioner points to a letter from Mr. A-A-, editor of the Journal of Applied Physics, which states that the Petitioner "was chosen as a reviewer for our publication because we find his research accomplishments to be extraordinary." The letter from Mr. A-A- does not include details about who determined the Petitioner's research accomplishments were extraordinary, how they evaluated the research accomplishments, or the specific aspects of the Petitioner's research they found to be extraordinary.

The Petitioner provided a copy of the Institute of Electrical and Electronics Engineers (IEEE) "PSPB Operations Manual," which contains the guideline that "[r]eviewers should be chosen for their high qualifications and objectivity regarding a particular article." Here we note that "should" is not an imperative. Further, it is not apparent whether IEEE applied this guideline to the Petitioner. Additionally, the guideline does not indicate what "high qualifications" means. As such, the manual does not offer sufficient details about its reviewer selection process to conclude that being selected as an IEEE reviewer well positions the Petitioner to advance his endeavor.

We reviewed the letter from Dr. R-L-J- who writes that "[t]he IEEE Holm Conference Technical Committee follows a rigorous method to select a reviewer and selects only those scientists who have excelled in their field of research. [The Petitioner] has proven expertise and contribution in his MEMS switch microcontact research." Like Mr. A-A-'s letter, Dr. R-L-J- does not describe the rigorous selection method or how the committee evaluated the Petitioner. Although the letter states that the Petitioner has contributed to MEMS switch microcontact research, Dr. R-L-J- does not identify any specific contributions that enabled him to become a reviewer, nor does he explain how the Petitioner has "proven" his expertise. Further, Dr. R-L-J appears to write on behalf of the IEEE Holm Conference Committee specifically, as opposed to the IEEE as a whole. As such, we cannot determine how the Petitioner's review activities for the IEEE Holm Conference relate to reviewing for IEEE.

The term "peer review" itself suggests that the Petitioner reviews peers and is not of greater expertise or skill than those for whom he provides reviews. The peer review evidence does not support a finding that the Petitioner has skills, knowledge, education, expertise, or a "record of success" beyond others performing the same research or conducting the same types of reviews. We conclude the Petitioner's peer review activities are not probative of the Petitioner's eligibility under prong two of Dhanasar.

The Petitioner contends that we incorrectly determined the recommendation letters did not sufficiently demonstrate the Petitioner's work had been utilized in the field or otherwise constituted a record of success. Our prior decision notes the recommendation letters lacked specificity and did not show a history of accomplishment. We explained, the "letters generally point to other papers that cited to [the Petitioner's] research in their own written work." For instance, Dr. A-V- comments upon how others in the field found the Petitioner's research to have "been of importance" and how "[h]is findings informed" other researchers and "enabled" their innovation. Likewise, Dr. A-S-M- states that the Petitioner's research "provided the authors with insight" and his "techniques were a critical influence for" another researcher. However, an examination of how the referenced authors cite the Petitioner's work does not substantiate Dr. A-V-'s or Dr. A-S-M-'s characterization of the Petitioner's work. Additionally, neither Dr. A-V-. nor Dr. A-S-M- explain how they are familiar with what other researchers found to be important, critical, enabling, or insightful.

The authors cite the Petitioner's research along with other researchers' work for the same principles. Often the Petitioner's research work serves as a cited example of a concept or topic that is already studied by others. Other authors cited the Petitioner's research as an example of a possible application of the findings. Our prior decision explained, "the authors reference the Petitioner's research as background material for their own findings, and these limited articles do not represent a level of his success in the field. The articles do not distinguish or highlight the Petitioner's work from the other cited papers." Accordingly, we concluded that this evidence did not sufficiently demonstrate the Petitioner's work has been utilized in the field or otherwise constituted a record of success.

The Petitioner asserts that we "rejected" his citation record; however, our prior decision reflects that we devoted four paragraphs to addressing the Petitioner's citation record. Therefore, we do not find support for the Petitioner's assertion. As our prior decision indicates, we look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.

Dhanasar is a precedent decision; however, the Petitioner cites to no legal authority for a one-to-one comparison of two petitioners operating in different fields of endeavor. Dhanasar does not suggest that a side-by-side comparison of individual petitioners is required or even possible. Although the Petitioner compares his evidence and citation record to that of Dr. Dhanasar's, the record contains only the Petitioner's citation record, facts, and proposed endeavor, not Dr. Dhanasar's. The Petitioner always bears the burden to establish his own eligibility by a preponderance of the evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). While the Petitioner's citation record is a positive factor, it is by no means the only factor we consider. Therefore, we find no error in our prior conclusion that the number of citations the Petitioner received does not reflect a level of interest in his work sufficient to establish that he is well positioned to advance his endeavor.

Many of the Petitioner's conference papers and abstracts were published in the years 2017 to 2019, during a time when, according to his résumé, the Petitioner worked as a graduate research assistant. As his doctoral project, the Petitioner studied the "[d]esign and assembly of a novel test fixture for MEMS [s]witch reliability and performance." Here, the Petitioner demonstrates the research he conducted as a student; however, the Petitioner has not demonstrated his capabilities in conducting research apart from the mentorship and leadership of more senior faculty members. Assessing his success in this context would require us to consider his student research as a "related or similar" effort to that of the proposed endeavor. While the evidence may demonstrate achievement as a student, we conclude that it is not particularly probative of a record of success or progress in advancing his research beyond this context.

The Petitioner points to the National Science Foundation's (NSF) partial funding of MEMS switch studies as evidence that relevant parties have interest in the Petitioner's proposed endeavor research. The Petitioner did not supplement the record with the funding documentation, but rather provided a letter from his doctoral research advisor, Dr. R-A-C-. Although Dr. R-A-C- gives "substantial credit" to the Petitioner for obtaining the funding, the letter does not describe what the Petitioner did to deserve such credit, nor does Dr. R-A-C- provide corroborative details, such as the amount or terms of the funding. Furthermore, the evidence does not indicate whether the NSF is aware of the Petitioner's specific proposed endeavor or that it impacted the NSF's decision to offer funding. The significance of the Petitioner's research in his field is not sufficiently corroborated by evidence of peer and government interest in his research, nor has the Petitioner demonstrated consistent government funding of his research projects. Accordingly, we cannot conclude that relevant individuals have interest in the proposed endeavor such that it well positions the Petitioner to advance the endeavor.

The Petitioner also claims that our prior decision considered evidence in a piecemeal fashion and not in the totality of circumstances. While it is true that our prior decision discusses evidence in categories, this is for the organization and simplification of a written decision. As our decision discusses the evidence provided, it demonstrates consideration of the totality of the circumstances. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993).

On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.