U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28023794

Date: SEPT. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chemical engineer and researcher, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal. 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 dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petition 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.

Whilst 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). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner

classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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 noncitizen 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 noncitizen. To determine whether the noncitizen 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, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors 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.

II. ANALYSIS

A. The Petitioner's Assertions

The Director concluded that the Petitioner's substantially meritorious proposed endeavor did not rise to a level of national importance as required by the first prong of *Dhanasar*. The Director determined the record did not clearly establish that the Petitioner was well positioned to advance the proposed endeavor. And the Director concluded that on balance of applicable factors, a waiver of the requirement of a job offer, and thus a labor certification, would not be beneficial to the national interest.

On appeal, the Petitioner contends that the Director erroneously denied the petition. The Petitioner asserts they meet all applicable prongs under the *Dhanasar* framework and merit a discretionary waiver of the job offer, and thus the labor certification, in the national interest. The Petitioner specifically assigns error by contending they have "provided sufficient evidence to demonstrate that [they are] an outstanding professional" and had previously worked in their chemical engineering and research field. The Petitioner also asserts that the Director's request for evidence (RFE) "lack[s]

specific reasons regarding the bases for the rejection of the evidence presented" and extends this criticism to the Director's decision as well.

At the outset, we note the Petitioner's elementary misunderstanding of the EB-2 immigrant classification. The Petitioner's self-professed identification as an "outstanding" professional" is misplaced here. The EB-2 immigrant classification does not require a petitioner to establish that they are an outstanding professional. The EB-2 immigrant classification requires a petitioner demonstrate that they have earned an advanced degree or are of exceptional ability.

The Petitioner contends that their ability to precisely respond to the RFE was impaired because its contents are vague and do not cite to any examples. To the contrary, our examination concludes that the RFE articulated the specific reasons why the record as composed at the time of initial filing did not demonstrate eligibility for the immigrant classification. For example, the RFE specified that the evidence the Petitioner submitted reflecting their presentations at conferences in 2002 did not sufficiently establish the potential prospective impact from broader implications of their endeavor to matters rising to a level of national importance. And the RFE highlighted that the Petitioner's broad assertions of positive economic effects from their endeavor were not sufficiently demonstrated in the record by evidence reflecting employment potential for U.S. workers or other substantial positive economic effects. Moreover the RFE provided a framework for the Petitioner to refer to as they addressed the concerns with suggestions of specific categories of evidence to establish eligibility for a discretionary waiver of the required job offer and thus a labor certification. So the Petitioner's assertions relating to the RFE's lack of specificity are not well taken.

B. The Proposed Endeavor's Substantial Merit and National Importance

We will now address whether the Petitioner has established that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest. The Petitioner described their endeavor as an "intention to continue [their] career as a Chemical Engineering Researcher." The crux of their endeavor was their "willing[ness] to work with any U.S. company in need of [their] services", ostensibly a research company contracted to provide services to other companies such academic institutions, or companies in the chemical, petrochemical, or pharmaceutical sector. The Petitioner submitted a set of job duties they aspired to perform in their endeavor, with a focus on process simulation. The Petitioner stated process simulation "can optimize entire industrial plants to be safer, cost-effective, and efficient. [Process simulation] can also lead to reduced maintenance costs, less equipment wear-and-tear, and better use of staff resources. Through [process simulations], I can expand experimentation efforts, go through trial-and-error testing, without wasting significant funding, or risking negative safety or environmental impacts, and access more data…" The Petitioner identified "environmental protection," "food production," "agriculture," "petroleum industry," and "medicine" as fields that could benefit from their endeavor.

We agree with the Director's conclusion that the Petitioner has not sufficiently demonstrated the national importance of their substantially meritorious endeavor under the first prong of the *Dhanasar* analytical framework.[1] To satisfy the first prong under the *Dhanasar* analytical framework, the

[1] The conclusions on page 3 of the Director's decision are not contradictory. The Director correctly stated that the record

Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. This prong of the *Dhanasar* framework focuses on the specific endeavor that the individual 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.

Although the evidentiary standard in immigration proceedings is the lowest preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet that standard. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

The evidence and argument the Petitioner introduced into the record does not help them carry their burden of production and persuasion. In support of their claim that they can satisfy the first prong of the *Dhanasar* analytical framework, the Petitioner provided their professional plan and evidence in the form of recommendation letters, an expert opinion letter, academic records, resume, evidence of the Petitioner's participation in academic lectures, memberships in their field, publications, conference organization, attendance and participation, and reports and articles from industry. [2]

The Director concluded the Petitioner's proposed endeavor, which requires the performance of chemical engineering and research, had substantial merit. But the Petitioner's endeavor did not rise to a level of national importance because the record did not adequately demonstrate the potential prospective impact of the proposed endeavor rose to a level of national importance. The Director concluded that the record did not sufficiently establish the proposed endeavor's broader impacts implicated their field of endeavor to a level commensurate with national importance.

We observe the Petitioner's proposed endeavor was largely a job search. For example, the Petitioner expressed their interest to work with "great companies" such as "Pfizer, Moderna, Aspen Tech, Honeywell, [and] ExxonMobil" or in fact "any U.S. company in need of [the Petitioner's] services." In support, the Petitioner cited U.S. government data reflecting "many openings" in the U.S. labor force for chemical engineers. A job offer is not a prerequisite to the filing of an immigrant petition in the EB-2 classification when seeking a national interest waiver. But the purpose of a national interest waiver is not to enable a petitioner to engage in a search of a job offer in the United States. So an endeavor consisting of offering job duties in search of employment with an employer with an objective for a particular benefit, such as "environmental protection," "food production," "agriculture,"

---

did not demonstrate the Petitioner's proposed endeavor's substantial merit and national importance. In other words, the Petitioner's proposed endeavor did not satisfy the first prong under *Dhanasar* because whilst the record demonstrated the proposed endeavor's substantial merit it did not also demonstrate the endeavor's national importance. To satisfy the first prong under the *Dhanasar* analytical framework, the Petitioner must demonstrate that their proposed endeavor has **both** substantial merit and national importance.

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

"petroleum industry" or "medicine" is not an endeavor, but a job search. An individual's job search does not have potential prospective impact on the national interest because it does not broadly implicate matters of national importance. And a noncitizen's job search, even if ultimately successful, does not relate to any potential positive economic effects that rise to a level of national importance.

But, even if we were to put to the side our view that the Petitioner's proposed endeavor constitutes little more than a job search, we would still conclude that the endeavor as proposed does not rise to one at a level of national importance. The Petitioner described their endeavor in terms of performing chemical engineering and research duties. Essentially, the Petitioner contends that because chemical engineering and research has numerous potential benefits across a wide swath of industries, every chemical engineer and researcher's work rises to a level of national importance. Whilst we recognize that chemical engineering and research applies to various fields and disciplines, the record does not clearly describe the way the Petitioner's specific work in the endeavor would potentially impact their field prospectively in a manner rising to a level of national importance. The performance of chemical engineering and research duties, on a broad level, do not implicate matters rising to a level of national importance. The main basis of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding their past career as a chemical engineer and researcher in their home country, their dedication to their field, and the potential manner in which the duties they intend to perform could benefit individual employers in a variety of different industries who could hire them. But these facts are not relevant to the question of whether a proposed endeavor elevates to a position of national importance. When evaluating the national importance of a proposed endeavor, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. So we are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. And to demonstrate the national importance of a proposed endeavor under *Dhanasar's* first prong, we look to its potential prospective impact. In *Dhanasar* we said that "we look for broader implications." *See Dhanasar*, 26 I&N Dec. at 889. Broader implications are not necessarily evaluated from a narrow frame of reference such as geography; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. And substantial positive economic impacts, such as a significant potential to employ U.S. workers particularly in an economically depressed area, can also help a proposed endeavor rise to a level of national importance. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance. And it is here that the Petitioner's endeavor, such that it is, is deficient. The Petitioner's endeavor is at its core the performance of job duties in search of a focus, be it "environmental protection," "food production," "agriculture," "petroleum industry," or "medicine." But the record does not sufficiently evidence how the Petitioner intends to perform these duties. And the record does not adequately support how the performance of these duties by the Petitioner would potentially prospectively impact any one or all these fields in a manner that rose to the level of the national interest, either through the proposed endeavor's broader implications or its positive economic impact. For example, the Petitioner does not sufficiently link in the record how their performance of chemical engineering and research would increase employment in an area with historic unemployment. It does not identify what specific broader

considerations would emanate from their specific performance of chemical engineering and research that would implicate the national interest.

And it is also unclear from the evidence in the record that the work of a single chemical engineer and researcher performing the job duties described by the Petitioner would have a significant impact on the field beyond its immediate sphere of influence, which at present is unidentified in the record. The evidence in the record does not highlight how the prospective potential impact of the work of one chemical engineer and researcher could have broader implications implicating the national interest in the wide variety of fields or "benefits" of their proposed work as the Petitioner identifies them. The Petitioner tries to highlight their endeavor's broader implications by linking the endeavor a mix of ideals applicable to a wide range of fields. For example, the Petitioner stated that chemical engineering can make fuels burn more cleanly, food of a higher quality, crops of greater resiliency against disease, and petroleum easier to extract and transport. But it is not clear how the Petitioner's specific performance of the job duties they describe would relate to any of the above stated benefits. And even if the record demonstrated the Petitioner's endeavor touched on all the identified implications, we would still conclude the broad benefits the endeavor implicated would not rise to a level of national importance because it is not clear from the record how they implicate the greater national interest. The performance of chemical engineering or research would directly benefit only that "great company" availing themselves of the Petitioner's chemical engineering and research services. This is akin to how the benefit of someone's teaching is generally only directly beneficial to the students being taught and not wider population. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension, activities which only benefit a small subset of "great" companies, like the Petitioner's proposed performance of chemical engineering and research, would not rise to a level of national importance. The record does not contain any meaningful analysis of the broader implications or potential prospective economic impact rising to the level of national importance stemming from the Petitioner's specific performance of chemical engineering or research. And the letters of recommendation containing testimonials of the services the Petitioner performed do not describe how the benefits they have received connect to broader implications rising to national importance or any nationally important economic impact.[3] In sum the record supports the conclusion that the potential impact of the Petitioner's endeavor would benefit only the "great companies" from which they seek employment.

The Petitioner's misapprehension of the first prong of *Dhanasar* analytical framework is patent in their contention that the furtherance of human knowledge stemming from the Petitioner's performance of chemical engineering and research is sufficient to establish its national importance rendering the endeavors economic impact irrelevant. But in *Dhanasar*, we evaluated an endeavor's potential to further human knowledge in the context of evaluating whether it is of substantial merit. National or regional substantial and positive economic effects are very germane and relevant to an evaluation of whether a proposed endeavor's potential prospective impact elevates to a level of national importance. And the Petitioner concedes that the performance of their endeavor, or their "contributions are not likely to translate to a direct economic impact." So the record contains insufficient evidence to

[3] Much of the documentation the Petitioner has submitted focuses on their individual accomplishments and expertise when attesting to the national importance and substantial merit of the proposed endeavor. It is important to note that the Petitioner's accomplishments and expertise are more relevant to the second prong of *Dhanasar*, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar* at 889.

demonstrate any the positive economic effects the Petitioner expects will be realized by their proposed endeavor.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* The Petitioner submitted an expert opinion letter comprising an analysis of the positional requirements for professor/lecturer (chemical engineering) authored by [redacted] an adjunct professor of mathematics at the [redacted] College [redacted] So the author of the expert opinion is not a chemical engineer and researcher. The record does not adequately support how their experience and individual qualifications as an adjunct professor of mathematics render them an expert in endeavors relating to chemical engineering and research such that their opinion could shed light on the national importance of the Petitioner's endeavor. Setting aside the authors' credentials, we observe that the entirety of the letter's content lacks relevance when it comes to the evaluation of whether the Petitioner's work rises to the level of national importance. The Petitioner expressed that their proposed endeavor was to perform chemical engineering and research at "great companies" in the United States. But the author's expert opinion concludes that the Petitioner "would work in the United States in an area of substantial merit and national importance" as "a seasoned Professor and Lecturer in Chemical Engineering…" And the author alludes to the merit and importance of the Petitioner's work opportunities for collaboration between United States and Brazilian businesses. But it is not clear from the record how these opportunities correspond to the chemical engineering and research that the Petitioner intends to accomplish. And the author emphasizes the Petitioner's academic and professional background at length. But they do not explain how this academic and professional background relates to a proposed endeavor of national interest due to its broader implications of national importance or any specific positive economic effect such as employment in an area with historically high unemployment.

So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

C. Well-Positioned to Advance the Proposed Endeavor

Since the Petitioner did not demonstrate the national importance of their proposed endeavor, the resolution of that issue by itself requires dismissal of their appeal. But since the Director's decision made specific conclusions about the Petitioner's eligibility under *Dhanasar's* second prong, we will discuss whether the Petitioner is well positioned to advance the proposed endeavor.

We conclude the Petitioner has not sufficiently demonstrated that they are well positioned to advance their proposed endeavor under the second prong of the *Dhanasar* analytical framework. In evaluating whether a petitioner is well positioned to advance their proposed endeavor under the second prong of *Dhanasar*, we review (A) a petitioner's education, skill, knowledge, and record of success in related or similar efforts; (B) a petitioner's model or plan for future activities related to the proposed endeavor that the individual developed, or played a significant role in developing; (C) any progress towards achieving the proposed endeavor; and (D) the interest or support garnered by the individual from potential customers, users, investor, or other relevant entities or persons.

As stated above, a petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Y-B-*, 21 I&N Dec. at 1142 n.3. The record contains evidence of the Petitioner's academic record, employment history, and professional recognitions such as awards and certificates. But simply having education, skills, and/or knowledge in isolation do not place a petitioner in a position to advance their proposed endeavor. This is only one factor amongst many factors which are evaluated together to determine how well positioned a petitioner is to advance a proposed endeavor. It is not clear from the totality of the evidence in the record how an individualized consideration of the multifactorial analysis under *Dhanasar's* second prong would demonstrate how well positioned the Petitioner is to advance their proposed endeavor.

And the record does not reflect how the Petitioner's prior activities as described in the recommendation letters is either a similar effort as that of their proposed endeavor or how it constitutes a record of success. Moreover the recommendation letters the Petitioner submitted are not material, relevant, or probative evidence in the record of interest or support in the endeavor the Petitioner proposed in their petition. Whilst they speak generally of the Petitioner's realization of certain objectives and skill in their field, they do not identify any recognition, achievements, or significant contributions to their field that tend to reflect that the Petitioner is well-positioned to advance their endeavor.

So the Petitioner has not demonstrated with material, relevant, and probative evidence that they are well-positioned to advance their proposed endeavor.

III. CONCLUSION

Because the Petitioner has not met the requisite first or second prong of the *Dhanasar* analytical framework, we conclude that they do not merit a favorable exercise of discretion to waive the requirement of a job offer, and therefore a labor certification. We reserve the issue of whether the Petitioner demonstrated categorial eligibility under the EB-2 classification and eligibility under the remaining prong of the *Dhanasar* analytical framework respecting whether, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See INS v Bagamasbad*, 429 U.S. at 25 and *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

In immigrant petition 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. The Petitioner has not met their burden of proof with persuasive material, relevant, and probative evidence which by a preponderance demonstrates the national importance of their proposed endeavor. So their appeal must be dismissed.

ORDER: The appeal is dismissed.