U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26383819

Date: MAY 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a speech language pathologist, seeks classification as a member of the professions holding an advanced degree. 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 Petitioner qualifies for EB-2 classification as an advanced degree professional but that the record did not establish that a waiver of the job offer requirement is 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 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner qualifies for EB-2 classification as an advanced degree professional based upon her master of science degree in speech and hearing science from [redacted] State University, which she obtained in 2015. The Petitioner states that in 2018 she enrolled at [redacted] University in a Ph.D. program in urban education, which was in progress at the time of filing the petition, and that she has been employed as a speech language pathologist at the [redacted] Institute, an organization affiliated with [redacted] since 2016. The Director found that the Petitioner established that her proposed endeavor has substantial merit and national importance, but did not meet the second or third *Dhanasar* prongs. The issues on appeal are whether the Petitioner has established that she is well-positioned to advance her proposed endeavor and whether, on balance, a waiver of the job offer requirement would benefit the United States.

As to the proposed endeavor, the Petitioner intends to engage in clinical-based research in the field of speech language pathology, with a focus on researching and implementing more effective language acquisition treatments for bilingual children both with and without developmental disabilities. In particular, she states that she intends to continue researching the importance of maintaining a child's home language to improve second language learning, maintain cultural identity in children, and provide parents and caregivers tools to help their children acquire English language skills.

In finding that the Petitioner did not establish that she is well-positioned to advance the proposed endeavor, the Director found that the record did not demonstrate that the Petitioner's published papers have been significantly cited; that her methodologies, techniques, or strategies have garnered significant interest in her industry; that the Petitioner's work has served as an impetus for progress or generated positive discourse in the field; nor that the record otherwise demonstrated a record of success rendering the Petitioner well-positioned to advance the proposed endeavor. The Director also found that there was not sufficient support in the record for the suggestions that her work had been "incredibly important" or was "revolutionizing care."

On appeal, the Petitioner submits a legal brief, a copy of the relevant section of the USCIS Policy Manual regarding the EB-2 immigrant classification, a copy of our decision in *Matter of Chawathe*, 25 I&N Dec. 369, and copies of letters of support previously submitted.

In determining whether a petitioner is well-positioned to advance their 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

[1] *See also 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).

achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Petitioner contends on appeal that the Director erred by placing improper emphasis on the evidence that is missing from the record, such as evidence of a citation record, while ignoring or discounting the evidence that the Petitioner did present, specifically her presentations, the letters of support, and her research work and funding.

We agree that an adjudicator should evaluate the totality of the evidence in the record to determine whether the preponderance of the evidence establishes that a petitioner is well-positioned to advance their proposed endeavor. However, we disagree that the Director erred by taking note of what the record lacks. The Director discussed the evidence in the record in detail, discussed what the evidence did establish and what it did not establish, and we conclude that the Director did not err in doing so. Moreover, upon de novo review, we agree with the Director that the evidence in the record does not establish that the Petitioner is well-positioned to advance her proposed endeavor, for the reasons discussed below.

The Petitioner claims that the Director improperly discounted the invitations she has received to conduct presentations and appear as a guest speaker. These include a presentation about speech therapy to a county-based autism support and services group and a presentation at her place of employment, the [redacted] Institute, regarding current research on language development tools for bilingual and diverse children. On appeal, the Petitioner particularly emphasizes a presentation she gave about typical and atypical bilingual language development to an international school in Honduras. The record contains a letter of support from the superintendent of that school, which states that the educators at the school are "actively using [the Petitioner's] language strategies" to support the students' language development. Upon review of the record, we conclude that these presentations do not sufficiently establish a record of success, interest from potential users, or other evidence rendering the Petitioner well-positioned to advance her endeavor and rather that they reflect typical presentations that a researcher in speech language pathology may present in the course of their work. Of the eight presentations and guest speaker appearances the Petitioner discusses, five of them are community-oriented presentations that she has given related to the immigrant and refugee community, and not specifically related to her endeavor. These include a TEDx talk at [redacted] University regarding how her volunteer work has informed her cultural competence and a talk for University of [redacted] undergraduates on food justice and mutual aid in the immigrant community. Although these community presentations may reflect respect in the community for her volunteer work with refugees, the record is not clear that they are directly related to presenting her research findings in speech language pathology nor that they render her well-positioned to advance her proposed endeavor related to speech language pathology.

As to the Petitioner's claim that the Director did not give sufficient weight to her research work and funding, she primarily discusses her involvement in a research study entitled [redacted] which received funding from a division of the U.S. Department of Health and Human Services. There are several documents in the record relating to this study, including a letter of support from [redacted] Executive Director of the Center for Autism and Related Disorders (CARD) at the [redacted] Institute [redacted], where the Petitioner is employed. The study involved comparing the outcomes for toddlers in childcare settings of caregivers providing

"instruction as usual" with the [redacted] instruction model. As to the Petitioner's role in this study, [redacted] states that the Petitioner "coded fidelity of implementation of the examiners administering" the study. Although it appears that the Petitioner's involvement was related to helping ensure the integrity of the study data, it is not clear how highly involved the Petitioner was in the study. The record shows that [redacted] is listed as the principal investigator on the grant award. In the information provided about the study, the Petitioner is not credited in the credit authorship statement nor listed in the acknowledgements, although the record contains an email from one of the individuals listed in the acknowledgements that thanks the Petitioner and another individual for their help with the [redacted] project.

By contrast, in *Dhanasar*, we noted that the petitioner had received "consistent" government funding of research projects in which he played a "significant" role, specifically that he initiated or was the primary award contact on several funded grant proposals and was the only listed researcher on many of the grants. *Matter of Dhanasar*, 26 I&N Dec. at 893, Fn. 11. Although [redacted] letter characterizes the Petitioner as an "integral member" of the team completing study, the Petitioner's participation in this study does not establish that she has garnered the level of interest in or funding for her research that was contemplated in *Matter of Dhanasar* as rendering a petitioner well-positioned to advance their proposed endeavor.

The Petitioner further contends that the Director improperly discounted the letters of support in the record. The Director, in finding that the letters did not establish that the Petitioner is well-positioned to advance her endeavor, noted that many of the letters are from individuals associated with the Petitioner rather than being from "independent, objective" sources, that the writers' characterizations of her accomplishments were not sufficiently supported by the other evidence in the record, and that several of the letters demonstrated primarily that she is a "valuable employee" rather than establishing that she is well-positioned to advance the proposed endeavor.

Upon de novo review of the letters of support in the record, we generally agree with the Director's assessment. For example, many of the letters contain conclusory statements or characterizations about the Petitioner and her work that are not sufficiently supported by specifics in the letters themselves or with other documentation in the record to establish that she is well-positioned to advance her endeavor. [redacted] CCC-SLP, states that the Petitioner has "been recognized by her peers as an expert" and that her peers will "seek her input on complex and challenging cases." Heather [redacted], states that the Petitioner is engaging in "exceptional and unique research" that fills "a gap in the literature about effectively empowering" caregivers to support children's literacy. Similarly, [redacted], the Petitioner's doctoral advisor, states that the Petitioner's dissertation project, which she was in the process of completing at the time of filing her petition, is "incredibly important" because it helps address a gap in research regarding how to help parents and children maintain a home language. And [redacted] CCC-SLP, states that the Petitioner's work is "incredibly influential" because school-based speech language pathologists are continually looking for evidence-based recommendations for interventions that can be used in the classroom.

The Petitioner contends that the Director, in concluding that the Petitioner did not submit sufficient additional evidence to establish these claims, employed a higher standard of proof than the appropriate preponderance of the evidence standard. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. The

Petitioner claims that because the Director did not specifically find that the letter writers' claims were "not true," and because the letters are—the Petitioner states—relevant, probative, and credible, it was improper for the Director to require additional evidence to support the stated claims. We disagree. Even if the letters are relevant, probative, and credible, this is not by itself sufficient to establish a claim; they must also lead one to believe that the claim is "more likely than not" or "probably" true. *Id.* at 376 (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)). In this matter, the letters are one piece in support of the claim that the Petitioner is well-positioned, and as noted, are insufficient even when viewed in the totality of the evidence to establish this requirement.

General statements that a petitioner has been "recognized as an expert" or that their work is "important" and "influential" are not sufficient alone for a petitioner to meet their burden of proof. Even the assertion in some of the letters that the Petitioner's research is "filling a gap in the literature" is not further explained by the letter writers, nor does the record demonstrate sufficient interest from potential clients, users, or investors to establish this claim. And although the Petitioner contends that it was improper for the Director to note her lack of a citation record, we conclude that the lack of a citation record does make the claim that the Petitioner's work is "influential" and "filling a gap" in the research literature to be less persuasive. 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 letters is not presumptive of eligibility. *Id.* Here, we conclude that while the letters carry some persuasive weight, they are not sufficiently detailed or persuasive for the Petitioner to meet her burden of proof.

Additionally, we agree with the Director that several of the letters primarily discuss her contributions as an employee. For example, [redacted] Assistant Director of Clinical Operations at CARD, states that the Petitioner is "playing a critical role at CARD's clinical services" and a "driving force behind the expansion of our bilingual autism specialty services." [redacted] CCC-SLP, Manager of Speech-Language Services Outpatient Clinic at CARD, states that "it is imperative that we have a bilingual Arabic speaking speech-language pathologist who has been specially trained in autism diagnosis and evidenced based practices," and further that the Petitioner is a "driving force" in the center's expansion to providing international services to Saudi Arabia. Finally, [redacted] CCC-SLP, a speech language pathologist at CARD, notes that the Petitioner is both "proficient in the treatment and diagnosis of autism" and proficient in English, Spanish, and Arabic, and that this skillset allows her to "provide important interventions to individuals with developmental delays and disabilities, establishing her an invaluable member of her discipline and our team at CARD."

The Petitioner asserts on appeal that work done for one's employer can be significant and impactful to the field and notes that the petitioner in *Dhanasar* worked as a postdoctoral research associate at a university. The Petitioner asserts that her work should not be afforded less weight because it was done for an employer, and that most researchers engage in research work as part of their employment. We acknowledge that letters related to employment may help establish that a petitioner is well-positioned to advance the proposed endeavor if the substance of the letters is probative of that claim. But the letters here primarily discuss the Petitioner's contributions to her employer and its ability to provide clinical services, rather than discussing a past record of success in similar or related efforts, a model or plan for future activities, interest from potential users, or other factors that would help establish that

the petitioner is well-positioned to advance the proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 890.

Overall, the letters demonstrate that the Petitioner has participated in research work, that she has led trainings in implementing some of the methodologies that she has researched, and that these methodologies have been employed by a small handful of educators and school-based speech language pathologists. But they do not demonstrate a sufficient record of success, interest in her work, progress toward achieving the proposed endeavor, or other evidence that would render the Petitioner well-positioned to advance the proposed endeavor.

Finally, the Petitioner also contends on appeal that the Director improperly used the prior analytical framework for evaluating national interest waiver petitions, articulated in *Matter of New York State Dep't of Transp. ("NYSDOT")*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998). This claim is based upon the language in the decision that research "must be shown to be original and present some benefit" to receive attention from the scientific community and that the Petitioner has not demonstrated her findings have influenced the field "beyond adding to the general pool of knowledge."

Based upon this language, the Petitioner states the Director was incorrectly looking for the Petitioner to demonstrate "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Matter of NYSDOT*, 22 I&N Dec. at 219 n.6. However, we conclude that the Director's language here is appropriate, and that the decision overall reflects a proper analysis of the record for evidence of a record of success, interest of potential clients and users, or other indications of the Petitioner's positioning to advance the proposed endeavor as articulated in *Matter of Dhanasar*.

Not every individual who has participated in original research and presented findings will be found to be well-positioned to advance their proposed endeavor. Rather, we examine the factors set forth in *Matter of Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Matter of Dhanasar*, 26 I&N Dec. at 890. The Petitioner claims that the Director improperly discounted her accomplishments by examining them through a piecemeal lens rather than in sum. However, in considering the record as a whole, including the presentations, her own original work, her lack of a clearly articulated leading role in funded research, the lack of a citation record, and the other evidence presented, the Petitioner has not established that she is well-positioned to advance the proposed endeavor.

In sum, the Petitioner has not established that she is well-positioned to advance the proposed endeavor, as required by the second *Dhanasar* prong; therefore, she is not eligible for a national interest waiver. We acknowledge the Petitioner's arguments on appeal as to the third prong of the *Dhanasar* analytical framework but, having found that the evidence does not establish that the Petitioner is well-positioned to advance the endeavor, we will not address those arguments here, and reserve our opinion regarding that issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

The Petitioner has not established that she meets the requisite second prong of the *Dhanasar* analytical framework. We therefore conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.