U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35490081

Date: APR. 1, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to employ the Beneficiary as a mechanical engineer under the employment-based second preference (EB-2) 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, although the Petitioner established that the Beneficiary qualified for classification as a member of the professions holding an advanced degree, 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. The matter is now before us on appeal.

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.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must demonstrate that a beneficiary is an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes the beneficiary's eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

- 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.[2]

II. ANALYSIS

The Director determined that the Beneficiary qualifies as a member of the professions holding an advanced degree. 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 will remand this matter for the entry of a new decision consistent with the following analysis.

A. The Proposed Endeavor

At the time of filing, the Beneficiary was employed as an advanced cell performance engineer for electric vehicles, or EVs, with [redacted].[3] A letter of support from the Beneficiary's manager at [redacted] provides the following description of his position:

> [The Beneficiary] focuses on addressing the battery cell fire or thermal runaway problem in EVs. His main responsibility in this role is to develop solutions that make battery cells safer and more reliable for public use. This involves leading efforts to identify and mitigate potential risks associated with battery cell fires or thermal runaway incidents, ensuring the safety and confidence of consumers in electric vehicle technology.

The record contains statements from the Beneficiary describing his intention to continue his work developing battery cell technology for electric vehicles in the United States. In response to a request for evidence, he provided the following description of his proposed endeavor:

> Looking ahead, my goal is to leverage my expertise in mechanical engineering to advance critical and emerging technologies within the transportation sector, particularly in the realm of electric vehicles (EVs) and battery safety. My specific focus will be on further developing innovative Thermal Runaway Protection (TRP) strategies and enhancing the performance and safety of Rechargeable Energy Storage Systems (RESS).

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

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for the Beneficiary to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

B. Substantial Merit and National Importance of the Proposed Endeavor

The first prong, substantial merit and national importance, 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. The Director determined the Petitioner submitted sufficient evidence to establish that the Beneficiary's proposed endeavor had substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. An endeavor may have national importance because it has national or even global implications within a particular field, such as improved manufacturing processes. *Id*. If the evidence of record demonstrates that an individual's proposed endeavor has the significant potential to, for example, contribute to the advancement of a valuable technology or field of study, it may rise to the level of national importance.[4] Regarding an endeavor in the fields of science, technology, engineering, or math—also known as STEM—importance may be found in its contribution to U.S. competitiveness or security in a variety of circumstances, such as when it will help the United States remain ahead of strategic competitors or current and potential adversaries.[5]

The Director determined that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor under *Dhanasar*'s first prong. The Director appears to have conflated the second prong with the first prong in the discussion of national importance. Specifically, the Director discussed deficiencies related to the Beneficiary's personal recognition, influence, and "substantial impact" such that he would be "known outside the circle of his personal acquaintance." However, the second prong of *Dhanasar* focuses on the Beneficiary and whether he is well-positioned to advance the endeavor; the first prong focuses on the substantial merit and national importance of the proposed endeavor itself, rather than any impact that the endeavor may have already had on the field or an individual's standing within the field. Further, in the discussion of national importance, the Director questioned the authenticity of letters submitted in support of the petition but did not identify any valid reasons for doing so.[6]

In addition, the Director did not indicate whether the Beneficiary's proposed endeavor would prospectively have a broader societal impact by contributing to critical and emerging technologies in a STEM field. Specifically, the Director did not discuss whether the proposed endeavor would help the United States stay ahead of strategic competitors and potential adversaries and contribute to our nation achieving or maintaining technology leadership or peer status among allies and partners. For these reasons, the Director's determination as to national importance is hereby withdrawn. On remand, the Director should analyze the issue of national importance consistent with the foregoing analysis.

[4] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[5] *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5
[6] As evidence that the Beneficiary's work in cell technology development has national importance, the Petitioner submitted letters of support detailing the Beneficiary's role in advancing EV technologies at GM and Ford Motor Company.

C. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their 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. *Id.* at 890.

The Petitioner submitted documentation of the Beneficiary's education and years of experience as an engineer for several employers, including his research-and-development roles with multinational automobile manufacturers. We agree with the Director's determination that the Petitioner satisfies the second prong of the *Dhanasar* framework with regard to the Beneficiary's positioning to advance his proposed endeavor.

D. Whether on Balance a Waiver is Beneficial

The third prong requires a 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. *Id.* at 890. The Director determined that the Petitioner did not establish that the Beneficiary meets *Dhanasar*'s third prong.

The Petitioner asserts the Beneficiary is eligible under the third prong of *Dhanasar* and indicates that his proposed endeavor is focused on a critical and emerging technology in a STEM field. The USCIS Policy Manual outlines specific evidentiary considerations relating to STEM degrees and fields, including with respect to evaluating eligibility under the third prong. When evaluating the third prong and whether the United States may benefit from a person's entry, regardless of whether other U.S. workers are available, the USCIS Policy Manual instructs us to consider the following combination of facts contained in a record as a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

The benefit to the United States is considered especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies. *See* 6 USCIS Policy Manual F.5(D)(2).

In making their determination with respect to the third prong of *Dhanasar*, the Director generally focused on the degree of influence the Beneficiary had in his field; whether his proposed endeavor was sufficient to forgo the labor certification process; whether his endeavor would benefit only the petitioning entity, rather than the nation; and the potential of his endeavor to create jobs, among other considerations. However, the Director's analysis of the third prong did not sufficiently address the USCIS Policy Manual with respect to those asserting a beneficiary's eligibility based on a proposed

endeavor involving the advancement of a critical and emerging technology in a STEM field—namely, those factors we have discussed in the bullet points above. Accordingly, we withdraw the Director's determination that the Petitioner did not establish that the Beneficiary meets *Dhanasar*'s third prong. On remand, the Director should consider this guidance in their determination on the third prong of *Dhanasar*. *Id.*

III. CONCLUSION

We will remand the matter to the Director for the entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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