U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36606888

Date: APR. 02, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks on behalf of the Beneficiary, a product manager, 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 classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish 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 pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish the 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, the petitioner must then demonstrate that the beneficiary merits 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:

- 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Beneficiary obtained a master's degree in integrated marketing communications from [redacted] in 2019. He was granted non-immigrant H-1B status in 2022 and has been employed by the Petitioner as product manager II since [redacted] 2023. His proposed endeavor is to use advanced cloud services, Machine Learning (ML), Artificial Intelligence (AI), and technologies to optimize user experience for the Petitioner's [redacted]

The Director determined the Beneficiary qualified for the underlying EB-2 visa classification as an advanced degree professional. However, the Director found that while the Beneficiary's proposed endeavor had substantial merit, the Petitioner had not demonstrated the national importance of the proposed endeavor under the first prong of *Dhanasar's* analytical framework. The Director also concluded the Beneficiary was well-positioned to advance his proposed endeavor, but that, on balance, waiving the job offer requirement would not benefit the United States. On appeal, the Petitioner provides a brief and resubmits the underlying record.[2] According to the Petitioner, the Director erred by overlooking evidence, and did not apply the preponderance of the evidence standard.

To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality, including relevance, probative value, and credibility, of the evidence. Matter of Chawathe, 25 I&N Dec. at 375-76; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review, we conclude the Director properly evaluated the evidence in determining the Petitioner had not established by a preponderance of the evidence that the Beneficiary's proposed endeavor has national importance.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we noted that, in assessing national importance, "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id at 890. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects,

[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).

[2] The record below included: a brief; memorandum; the Beneficiary's academic documents, resume, and work sample; company documents, including those relating to the gaming segment, data, and sales; articles highlighting the shortage of STEM workers in the technology, AI, and video game sectors; an expert opinion letter; letters of support; documents on the government's prioritization of the safe development of artificial intelligence; U.S. patents held or applied for by the Petitioner.

particularly in an economically depressed area, for instance, may well be understood to have national importance." Id.

According to the Petitioner, the record below included a substantial discussion of how the Beneficiary's proposed endeavor will support its operations to contribute significant revenue to the U.S. economy and to maintain its national and international standing as a leader in the gaming and entertainment industry. However, the Director determined that the Petitioner's evidence did not demonstrate the economic implications of the Petitioner's operations would be attributable to the Beneficiary's proposed endeavor. We agree with the Director that the evidence below does not demonstrate the Beneficiary's endeavor has significant potential to employ U.S. workers or would have other substantial positive economic effects to attain the level of national importance contemplated by Dhanasar.

According to the Petitioner's memorandum submitted below, its revenue is in the several billions and directly benefits the U.S. and global economy and its advancements and innovation in gaming will only continue to expand its revenue opportunities. The Petitioner explained that the Beneficiary's proposed endeavor directly contributes to the Petitioner's sustained profits and efficiencies in its operations; helps impart buyer confidence for enhanced gaming experiences; and helps generate buyer engagement, excitement and confidence in cloud-based streaming for multiplayer gaming content and experiences. In support of its assertions, the memorandum refers us to letters by two industry experts[3] and letters by two of its employees. The industry expert letter dated August 2024, and the Petitioner's employee letters, one by a senior manager overseeing the Beneficiary's work dated May 2024, and another by his direct supervisor, a manager in product management dated August 2024, each described the Beneficiary's contributions to the Petitioner's product. They described how the Beneficiary will help the company stay competitive, optimize its technical product development and thereby maximize revenue opportunities. We also acknowledge the Petitioner's company documents, the articles, and industry letters describing its revenue and contributions to the gaming industry. However, benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a person's endeavor has national importance. See generally USCIS Policy Alert PA-2025-03, Second Preference Eligibility for National Interest Waiver Petitions 13 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (providing, as guidance, factors to consider in analyzing national importance). At issue is whether the petitioner can demonstrate that the beneficiary's individual endeavor stands to have broader implications, such as for a field, a region, or the public at large. Id. Here, neither the memorandum, the letters, or the remaining record provide any financial analysis or details supporting how the specific functions and tasks carried out by the Beneficiary in his proposed endeavor affect the Petitioner's revenue such that it would have "significant potential to employ U.S. workers" or "other substantial positive economic effects, particularly in an economically depressed area." Matter of Dhanasar, 26 I&N Dec. at 889-90.

The Petitioner also asserts that the record below highlighted the critical importance of the Beneficiary's proposed endeavor of integrating advanced computing and machine learning

[3] The industry expert letter dated February 2024 discusses the Petitioner's business operations and how its software engineers are advancing the Petitioner's software engineering endeavors. The letter makes no reference to the Beneficiary's proposed endeavor and therefore does not support that it has national importance.

technologies within the digital entertainment industry, noting the Beneficiary's role in facilitating analytics of consumer behavior and experience, strengthening data security, and enhancing performance optimization, technologies which "can be applied across diverse industry sectors beyond the digital entertainment sector." According to the Petitioner, it also submitted evidence of U.S. governmental interest in using AI and ML technologies to bolster e-commerce and advance U.S. capabilities in critical and emerging technologies. The Director determined that the Petitioner did not offer sufficient evidence to demonstrate that the proposed endeavor stands to have implications beyond the Petitioner and its clientele to impact the advance cloud services, ML, and AI fields more broadly. We agree.

We acknowledge that the Beneficiary's work touches upon many important fields, like ML and AI, and recognize the value of the claimed technological innovations and the importance of Science, Technology, Engineering, or Mathematics (STEM) related professions. However, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. See Dhanasar, 26 I&N Dec. at 889 (in determining national importance, 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").

Further, we have reviewed the record, including the August 2024 industry expert letter and employee letters describing, for example, how the software the Beneficiary develops has increased speed, efficiency, and made the Petitioner's user platform more friendly and how his work on a cloud-driven platform promotes features based on a user's behavior, including a modern authentication method that enhances cybersecurity, and that the Petitioner has used this platform to engage millions of its users. However, the Petitioner has not demonstrated that the technological advancements would be directly attributable to the Beneficiary's particular role as a product manager. As described in the industry expert letter and employee letters, the Beneficiary works as part of a team of, for example, other product managers, senior managers, and engineers. The issue here is not the broader implications of the Petitioner's innovations or the potential utilization of its products by the industry, but rather the potential prospective impact of the Beneficiary's specific proposed work as a product manager.[4]

Moreover, the record does not sufficiently demonstrate that the work the Beneficiary performs for the Petitioner will be shared with the field to have a significant impact beyond the Petitioner's employer and its customers. For example, the record shows that the Petitioner has patented features and technology worked on by the Beneficiary and several other inventors and has another patent pending. In addition, the Beneficiary's supervisor described the confidential nature of the work he performs, and the record does not describe how the proposed endeavor of working to advance technologies would be shared, as the Petitioner claims, "across diverse industry sectors beyond the digital entertainment sector" to have national or even global implications within a particular field. Id at 890.

[4] On appeal, the Petitioner asserts that the Director dangerously concluded that one engineer does not have the potential to impact the nation. To the extent the Petitioner is referring to the Director's finding that the Petitioner "ha[d] not established how a single advance cloud services, machine language, and artificial intelligence product manager['s]" proposed endeavor would have national importance. We interpret the Director's decision to state the Petitioner had not met its burden to establish the prospective impact of the Beneficiary's work would rise to the level of national importance, as contemplated by Dhanasar.

Finally, the Petitioner also asserts that it included substantial evidence to demonstrate that the Beneficiary's endeavor helps advance the U.S. interest in attracting and retaining STEM workers, which is critically important given the shortage of qualified workers in these fields. However, the alleged shortage of occupations or occupational skills does not render a proposed endeavor nationally important under the Dhanasar framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

For the above reasons, the Petitioner has not established the national importance of the Beneficiary's proposed endeavor. As the identified reasons for dismissal are dispositive of the appeal, we decline to reach and hereby reserve the remaining arguments raised by the Petitioner concerning the Beneficiary's eligibility under Dhanasar's third prong. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not established the requisite first prong of Dhanasar's analytical framework, it consequently has not established that the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.