U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36915749

Date: APR. 07, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to permanently employ the Beneficiary in the position of staff machine learning engineer. It requests his classification 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 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 Beneficiary qualifies for EB-2 classification as an advanced degree professional, 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's qualification for the underlying EB-2 visa classification as either a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Once a petitioner demonstrates the beneficiary's eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id.*

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 alien is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.
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Id.

II. ANALYSIS

The Director denied the petition, concluding that although the Beneficiary is eligible for EB-2 classification as an advanced degree professional, the Petitioner did not establish that a waiver of the labor certification and job offer requirement is in the national interest because they did not establish eligibility under any of the three prongs outlined in *Matter of Dhanasar*. On appeal, the Petitioner contests the Director's determination and asserts eligibility under all three of the *Dhanasar* prongs.

The record supports the Director's determination that the Beneficiary qualifies for EB-2 classification as a member of the professions holding an advanced degree. As such, the only remaining issue is whether the Petitioner has established eligibility for a discretionary waiver of the labor certification and job offer requirement under the *Dhanasar* framework.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.*

The Petitioner, a leading provider of video game and streaming entertainment platforms, states that the Beneficiary's proposed endeavor will involve his continued employment as a staff machine learning engineer. It describes his proposed work as follows:

> The . . . proposed endeavor focuses on the design, development and implementation of scalable machine learning (ML) and artificial intelligence (AI) models and cybersecurity protections to identify, analyze and address user safety concerns within [the Petitioner's] gaming and streaming services. Specifically, [the Beneficiary] specializes in the implementation of AI and ML-based solutions including child safety models to protect underaged children, content safety solutions to protect players from spam, hate speech and bullying, and platform safety features that safeguard [the Petitioner's] platforms and streaming services from cyberattacks.

The Petitioner asserted the Beneficiary's work has the potential to broadly enhance societal welfare by safeguarding digital spaces and protecting users from cybercrimes, exploitation, bullying and other forms of harassment on its gaming and streaming platforms. It emphasizes that these platforms have an

estimated 120 million users worldwide (including 30 million in the United States) and that the endeavor will therefore have far-reaching impacts. The Petitioner further claimed that the Beneficiary's work has the potential to be adopted by other companies and thus may have national or even global implications in the gaming industry, digital entertainment sector, and "potentially all other industries that leverage online platforms to permit interaction and discussion among users." Finally, the Petitioner highlighted the endeavor's potential to lead to substantial revenue and to advance critical U.S. governmental interests by enhancing U.S. capabilities in critical and emerging technologies (CET).

In addressing the substantial merit of the proposed endeavor, the Director's decision states contrary determinations. Specifically, the Director concluded on page 3 of the decision that "the [Petitioner] has not established that the proposed endeavor is of substantial merit," but in the next paragraph stated that "USCIS has determined the beneficiary's endeavor is of substantial merit." Upon de novo review of the record, we conclude the Petitioner has demonstrated by a preponderance of the evidence that the Beneficiary's proposed endeavor has substantial merit in the areas of business and technology.

The Director addressed the evidence submitted to establish the national importance of the proposed endeavor, which included letters of recommendation, expert opinion letters, industry and media reports, the Petitioner's corporate report, and evidence of the Beneficiary's work product, among others.[2] After considering this evidence, the Director determined the record did not establish the national importance of the Beneficiary's proposed endeavor as it did not show how it would sufficiently extend beyond the Petitioner and its customers such that it would impact his field more broadly. Accordingly, the Director concluded the Petitioner did not demonstrate the proposed endeavor would have impacts on the U.S. economy, the Petitioner's industry, societal welfare, or other U.S. interests at a level commensurate with national importance.

On appeal, the Petitioner asserts the Director misapplied the legal standard of review and disregarded probative evidence demonstrating eligibility under the *Dhanasar* framework. It maintains the previously provided evidence established the broader implications of the Beneficiary's work, including positive societal impacts attributable to his endeavor, the potential for widespread industry adoption of AI, ML, and network security technologies for the detection of cyberattacks and other malicious content, and the endeavor's alignment with national government initiatives regarding STEM workers and CET.

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what it claims is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. 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. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon de novo review of the record, we conclude the Petitioner has not established, by a preponderance of the evidence, that the Beneficiary's proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

In *Dhanasar*, we concluded that in determining national importance, the relevant question is not the importance of the field, industry or profession in which a petitioner may work; instead, we focus on

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

"the specific endeavor that the foreign national proposed to undertake." 26 I&N Dec. at 889. We therefore "look for broader implications" of the proposed endeavor. In this regard, we observed that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* Thus, the issue is not whether AI and machine learning technologies, the field of cybersecurity, or the gaming and digital entertainment industries are areas of national importance. Rather, the Petitioner must demonstrate the national importance of the specific, proposed endeavor, which involves the Beneficiary's continued work for the Petitioner in the position of staff machine learning engineer.

As noted by the Petitioner, USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially if focused on critical and emerging technologies, or other STEM areas important to U.S. competitiveness or national security. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. Some proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests but may also have sufficiently broad potential implications to demonstrate national importance. *Id.*

Therefore, we acknowledge the value of the AI and ML technologies that the Beneficiary uses to enhance the safety and security of the Petitioner's gaming platform and streaming services. The record also contains evidence indicating a lack of qualified STEM workers in these specific fields. However merely working in a STEM field, or in an occupation in which there is a national shortage of workers, is insufficient to establish the national importance of the proposed endeavor. While the Petitioner submitted evidence, such as industry and media reports and articles, explaining the substantial merit of the Beneficiary's field of expertise, this evidence does not sufficiently demonstrate how the Beneficiary's employment with the Petitioner would have the broader impacts required to show the proposed endeavor's national importance.

Similarly, the Petitioner cannot meet its burden to demonstrate the national importance of the proposed endeavor by relying on its own prominence and reputation in its field. The Petitioner placed considerable emphasis on its industry-leading status and suggested that, based on the sheer scope of its operations, most of its engineering and other staff in STEM positions perform work that satisfies *Dhanasar*'s first prong. In *Dhanasar*, we highlighted that while the field of STEM education may be of national importance, the duties of a STEM teacher in a classroom would not necessarily be of national importance because the impact that would flow from the teacher's activities would not sufficiently extend beyond the students sitting in their classroom. *See* 26 I&N Dec. at 893 (stating "[w]hile STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.") Likewise, here, the record does not establish that the Beneficiary's duties as a staff machine learning engineer would impact the gaming or digital entertainment industry more broadly, beyond the Petitioner and its customers. *Id.*

The Petitioner submitted two expert opinion letters in support of the petition, both of which address the first prong of the *Dhanasar* framework. Both letters focus, in part, on how the Petitioner's products and operations impact the economy and the industry in which it operates. However, neither letter offers

sufficient support for a determination that the Beneficiary's specific proposed endeavor to continue his work as a staff machine learning engineer would have a demonstrable impact on the national economy, the cybersecurity field, the advancement of AI and machine learning technologies, the gaming industry, or other U.S. national interests.

The initial expert opinion letter, from a professor at [redacted] University, does not mention the Beneficiary or his proposed endeavor at all but generally refers to the position of "software engineer."[3] This letter focuses on the Petitioner's prominence in the gaming industry, and the general interest the U.S. has in the fields of artificial intelligence and cybersecurity. The professor concluded that based on information regarding the Petitioner and its operations and "the substantial merit and national importance of the company's work to the United States," he could "state unequivocally that the proposed work of [the Petitioner's] employees holding positions as Software Engineers . . . with the company is of substantial merit and significant national importance."

The second expert opinion letter is from a professor at [redacted]. He opines that the Beneficiary's "proposed endeavor to design, develop and implement AI-driven solutions aimed at expanding content moderation and cybersecurity controls is clearly one of national importance . . . as it would advance the United States' national interests in the economy, technological competitiveness, information security and public safety." However, the author primarily discusses the Beneficiary's work in terms of what he contributes to advancing the Petitioner's own technologies, and attributes the national importance of the Beneficiary's work to the Petitioner, rather than to the Beneficiary's specific proposed endeavor. For example, the letter states that "as a long-time leader in the video game industry, [the Petitioner] plays a key role in driving technological advancement and innovation in this sector and ensuring the competitiveness of US gaming studios in high value global market." He concludes that the Beneficiary's endeavor would "further the US national interest in enhancing the utilization and understanding of CET by a major economic driver and competitor in the technology field."

Both expert opinion letters' assertions regarding the national importance of the proposed endeavor relate back to the Petitioner's own reputation within the gaming industry, and the importance that the software sector, cybersecurity and gaming have on the U.S. economy and other national interests. However, the Petitioner cannot establish the national importance of the Beneficiary's specific proposed endeavor by relying on its own leadership position in an industry that is important to U.S. economic or technology interests. Work that benefits a specific employer, even an employer with a national or global footprint or one that is among the leaders in its industry, is not sufficient to establish that any given employee's specific endeavor has national importance based on its potential prospective impact. The Petitioner's claim on appeal that the Beneficiary's endeavor "is nationally important based on its impact to [the company]" is therefore not persuasive. To meet its burden, the Petitioner must go beyond explaining how the Beneficiary's work benefits the company, or how the Petitioner itself benefits its industry or the U.S. economy. Instead, it must show that any potential economic, societal, technological or other broader implications in the field or industry would be attributable to the Beneficiary's individual proposed endeavor. The Petitioner has not made such a showing.

[3] The letter states that "software engineers" include "experts focusing on testing, QA, data infrastructure, and/or security as well as Software Engineers focusing on AI."

In addition to the expert opinion letters, the Petitioner provided letters from C-L-, Engineering Manager Machine Learning, and C-Y-, Head of Machine Learning, who have both supervised the Beneficiary's work and are familiar with the company's AI and machine learning technologies. These letters offer detailed descriptions of the Beneficiary's specific skills and expertise in his field and indicate he is a valued employee who is expected, based on his position, to contribute to the Petitioner's overall efforts to advance its gaming and streaming services, including the security, safety, and integrity of those services. For example, Mr. Y- notes in his letter that the Beneficiary contributes to a critical function for the organization, and one that is "essential to our ability to maintain our preeminent standing within the industry." However, as discussed, an employee developing a particular technology for use by a given company cannot show national importance based on evidence that this technology will have benefits for the company and its clients alone. Further, the Petitioner cannot solely rely on its standing in the field, its large market share, or its expansive customer base and claim that essentially all its engineers and other STEM workers (a group that according to the Petitioner includes "thousands of workers") perform nationally important work that satisfies *Dhanasar's* first prong.

The recommendation letters from the Beneficiary's managers also include assertions regarding the current and potential broader implications of his individual work. In his letter, Mr. Y- observes that most top technology companies, like the Petitioner, utilize AI and machine learning technologies to combat online harassment, bullying and cyberattacks and notes there is an industry-wide effort to advance the efficiency and capabilities of these technologies. He notes the Beneficiary's participation in Tech Coalition, an industry collaboration that includes several major U.S. technology corporations, and attendance at a conference where he shared "insights gleaned from his work," but he does not further elaborate on these activities.

While the Beneficiary may participate in some collaborative efforts as part of his duties for the Petitioner, the recommendation letter from Mr. Y- attributes a level of impact on the broader field that has not been sufficiently corroborated by other evidence. For example, his letter states the Beneficiary "has set new standards for detecting harmful content which can be adopted by platforms globally" and asserts that such innovations "will certainly lead to the creation of new U.S. jobs in AI development, cybersecurity . . . and positively impact the nation's economy." However, the record does not articulate or document what these "new standards" are or include evidence that such standards have been or will be disseminated for use by other companies in the industry, such that they would potentially have the claimed far reaching industry and economic impacts. Mr. Y- further states that the loss of the Beneficiary's expertise would disrupt "key partnerships and collaborations that rely on his technical leadership" and "hinder future advancements in AI and machine learning technologies." However, the Petitioner did not submit evidence that the Beneficiary plays a major leadership role in a specific industry partnership or collaboration or otherwise show that his duties as a staff machine learning engineer make him critical to future advancements in artificial intelligence technologies in the United States.

In her recommendation letter, Ms. L- states that the "[t]he commercial impact of [the Beneficiary's] enablement of machine learning and artificial intelligence technological advancements will be inevitable for companies across the country and beyond" and states that his experience is "not only critical to [the Petitioner] but also furthers U.S. national interest." She notes that the Beneficiary "spreads awareness about the significant improvements the entertainment industry needs" and "inspires other researchers and developers," but provided insufficient basis for her conclusion that his

proposed endeavor to continue his work with the Petitioner would have the claimed "inevitable" national impacts.

Ms. L-'s letter also provides summaries of four pending U.S. patent applications co-authored by the Beneficiary during his tenure with the Petitioner, noting that these "novel contributions . . . can be utilized by companies in various industries across the globe." The patent applications, as described, involve gameplay functions that appear unrelated to the Beneficiary's proposed endeavor to design and implement AI and ML-based cybersecurity protections to address user safety concerns within the Petitioner's gaming and streaming services. Regardless, the Petitioner did not, for example, demonstrate through relevant evidence that there is widespread industry interest in adopting technology that can be attributed specifically to the Beneficiary or show that his current or prospective work for the Petitioner stands to impact development of similar technology by others in the industry at a level commensurate with national importance.

Finally, the Petitioner has not shown how the Beneficiary's proposed endeavor to continue his employment as a staff machine learning engineer has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. The Petitioner asserted that its standing within the gaming industry and its high levels of revenue establish the endeavor's national importance. However, the Petitioner did not sufficiently explain or demonstrate how the Beneficiary's employment alone would have any projected economic impact or create jobs at a level indicative of national importance. On appeal, the Petitioner does not directly address this issue, and the previously submitted statements and evidence did not sufficiently explain or demonstrate any potential or projected economic impacts likely to result from Beneficiary's ongoing employment. Without such evidence, the record does not show any benefits to the U.S. regional or national economic resulting from the Beneficiary's proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. 26 I&N Dec. at 890.

For the reasons stated above, we conclude that the Petitioner has not shown that the Beneficiary's proposed endeavor has national importance as required under the first prong of the *Dhanasar* analytical framework.

A petitioner must meet all three prongs of the *Dhanasar* analytical framework to establish eligibility for a national interest waiver. Since the Petitioner has not demonstrated eligibility under prong one, we need not reach and therefore reserve its remaining arguments concerning eligibility under *Dhanasar*'s second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, it 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.