U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30470785

Date: APR. 15, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a provider of cable, Internet, and telephone service, employs the Beneficiary as a vice president in charge of a streaming service called [redacted]. The Petitioner seeks to classify the Beneficiary as a member of the professions holding an advanced degree. *See* 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 sustain the appeal.

I. LAW

To qualify for a national interest waiver, a petitioner must first show the beneficiary's eligibility 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 the beneficiary's EB-2 eligibility, they must then establish 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. While neither the 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 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 Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary).

- 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

We agree with the Director's determination that the Beneficiary qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined 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. The Director determined that the Petitioner had not established the national importance of the proposed endeavor and had not satisfied the second and third prongs of the *Dhanasar* national interest test.

The Beneficiary earned a master's degree in business administration in Japan in 2008. The Beneficiary worked for [redacted] in various positions from 2000 to 2014. In 2014, he became the chief operating officer of [redacted] shortly after its founding. When the Petitioner acquired [redacted] in 2020, the Beneficiary began serving in his current position as a vice president. The Beneficiary is currently in the United States as an O-1 nonimmigrant with extraordinary ability.

The Beneficiary stated that his proposed endeavor is "to continue to work as a Vice President at [the petitioning company] focusing on creating new streaming platform[s] and eco-system." A senior vice president to whom the Beneficiary reports stated that the Beneficiary "leads and oversees business development for [redacted] and "is also responsible for all facets of contract development, negotiation, and closeout with over 150 content partners." Other materials in the record provide further details about the Beneficiary's position with the petitioning company, and thus about the proposed endeavor.

A. Substantial Merit and National Importance

The first *Dhanasar* 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance. *Id.* at 889-890.

[redacted] provides a free, ad-supported streaming television (FAST) service. The record indicates that the [redacted] platform is built into several brands of smart televisions, and available as an application on some others, reaching more than 20 million monthly active users. [redacted] and its products won national industry awards in 2018 and 2020.

The Director determined that the Petitioner had established the proposed endeavor's substantial merit, but not its national importance. The Director had previously stated in a request for evidence (RFE) that, while the Petitioner had "described the importance of the [redacted] platform, [it] did not describe

the importance of the beneficiary's proposed endeavor of being [redacted] vice president." In the denial notice, the Director stated:

> [T]he issue here is not the broader implications of [the Beneficiary's] innovations or the widespread utilization of these services by consumers, but rather the potential prospective impact of [the Beneficiary's] specific proposed work. The record does not show that [the benefit from the Beneficiary's] proposed endeavor stands to sufficiently extend beyond their local area, company, future clientele, or business partnerships to impact the field more broadly at a level commensurate with national importance.

In this way, the Director appears to acknowledge the national importance of [redacted] questioning only the importance of the Beneficiary's role. We agree with the Petitioner's assertion on appeal that the Director does not appear to have fully considered the evidence in the record.

Industry executives credit the Beneficiary with responsibility for advantageously positioning [redacted] and increasing its availability and visibility, which resulted in securing licenses from well-known content providers. Supporting this assertion, the record contains copies of contracts and license agreements between [redacted] and other entities, which the Beneficiary had signed on behalf of [redacted] The record indicates that the [redacted] platform is built into several brands of smart televisions, and available as an application on some others, reaching more than 20 million monthly active users.

In letters in the record, industry executives called the Beneficiary "a key figure in creating and maintaining" relationships with content providers. [redacted] president stated that "none of [redacted] success, technical development, growth, or output would have been possible without the [Beneficiary's] efforts and expertise." [redacted] chief financial officer called the Beneficiary "essential to [redacted] continued operation and future growth."

Materials in the record closely tie [redacted] success in wider adoption and resultant economic growth to the Beneficiary's ongoing work with the company. In this way, the Petitioner has shown that the Beneficiary's role with [redacted] affects millions of viewers in diverse geographic areas nationally, and in this way the Petitioner has shown the national importance of the Beneficiary's proposed endeavor.

B. Well Positioned to Advance the Proposed Endeavor

The second *Dhanasar* prong shifts the focus from the proposed endeavor to the individual. To determine whether an individual is 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In denying the petition, the Director acknowledged that the Beneficiary has "the necessary skills, experience, and track record to continue [his] career," but stated that the Petitioner must also "establish that [the Beneficiary has] a track record that supports projections of future work in the endeavor as well as the plans and progress to drive the endeavor forward." The Director listed the factors described in *Dhanasar* but did not explain how the evidence relates to those factors. The Director stated, without

elaboration: "Here, the petitioner has not, for example, demonstrated that their work has generated substantial positive discourse in the field or otherwise provided sufficient evidence to establish that their work constitutes a record of success or progress." The Director also stated without examples or further explanation that the Petitioner made "several statements that are not supported by evidence."

We agree with the Petitioner that the Director's decision did not identify any specific deficiencies in the Petitioner's evidence, and did not discuss the evidence that the Petitioner submitted with regard to the second *Dhanasar* prong.

The Director acknowledged the Beneficiary's past experience as a [redacted] executive. [redacted] former chief executive officer, now a senior vice president in the petitioning organization, stated that the Beneficiary "has been one of the leading and core executives of [redacted] since its initial conception," and "there is nobody in the world who is better positioned to continue to lead the business development of our platform." The same official stated that the Beneficiary "has been the driving force behind nearly all of [redacted] partnerships" with "major smart television brands."

With respect to "plans and progress to drive the endeavor forward," the record documents the Beneficiary's ongoing work to secure content for the platform as well as to broaden its distribution. The record also includes plans and forecasts, showing the company's roadmap for moving forward. Several individuals in a position to know have attested to the Beneficiary's role in formulating and implementing these plans. We conclude that the Petitioner has shown that the Beneficiary is well positioned to advance an endeavor that he had already been pursuing for nearly a decade at the time the Petitioner filed the petition.

C. Whether on Balance a Waiver is Beneficial

The third *Dhanasar* 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

In the denial notice, the Director did not discuss the merits of the Petitioner's assertions under the third *Dhanasar* prong. Instead, the Director stated that, because the Petitioner had not satisfied the first two prongs, the petition could not be approved. As discussed above, we disagree with the Director's determination.

The record establishes that the Beneficiary has been, and continues to be, a key figure in [redacted] operations, rather than an interchangeable executive assigned to one of the Petitioner's subsidiaries. Given the importance of [redacted] which the Director acknowledged in the denial decision, and the Beneficiary's ongoing central role therein, we conclude 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 based on the specific facts of this individual matter. *Matter of Dhanasar*, 26 I&N Dec. at 890-91.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.