U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37834230

Date: APR. 17, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a director of broadcast technology and innovation, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions with 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 Texas Service Center denied the petition, concluding the Petitioner did not establish 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. 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 withdraw the Director's decision and remand the matter for the entry of a new decision.

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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit 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 U.S. Citizenship

and Immigration Services (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. NATIONAL INTEREST WAIVER

The Director determined that the Petitioner qualified for the underlying EB-2 classification as a member of the professions holding an advanced degree. Therefore, the remaining issue was whether the Petitioner established eligibility for a national interest waiver under the *Dhanasar* framework. As discussed, the Director determined the Petitioner did not demonstrate this basis for eligibility, more specifically, that he did not establish the national importance of his proposed endeavor consistent with the first prong of *Dhanasar*.

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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* We agree with the Director's conclusion that the proposed endeavor has substantial merit as it falls within the range of areas of substantial merit, namely business, science, technology, and culture. *Id.*

The Petitioner indicated that his proposed endeavor would "revolutionize the U.S. media & entertainment industry by introducing advanced broadcasting systems and cutting-edge IT solutions that enhance operational efficiency, improve viewer experiences, and solidify the nation's position as a global leader in media technology." The Petitioner stated this initiative was centered around cloud-based broadcasting, AI-enhanced automation for content editing and personalization, and data-driven optimization he proposed would decentralize traditional broadcast operations. The Petitioner asserted his endeavor would have "far-reaching implications" through enhancing the resilience and efficiency of broadcast operations. He explained that his endeavor would eliminate extensive physical infrastructure in broadcasting and reduce costs, contribute to the health of the U.S. broadcasting industry, create new job opportunities, and position the U.S. as a leader in the media industry.

In addition, the Petitioner stated that his proposed endeavor to decentralize broadcasting would reduce its vulnerability to disruption from natural disasters, technical failures, and targeted attacks. The Petitioner emphasized that his proposed endeavor had the potential to generate substantial positive economic effects and enhance societal welfare or cultural and artistic enrichment. The Petitioner indicated that his endeavor had the potential to improve the quality and accessibility of entertainment and journalism and position the United States as a global leader in media technology and innovation. He asserted his endeavor would impact U.S. government initiatives focused on promoting advanced computing, artificial

[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 to be discretionary in nature).

intelligence, and science, technology, engineering, and mathematics (STEM). The Petitioner submitted several letters of support from experienced professionals working in the broadcast industry discussing the potential national importance of his proposed endeavor.

In denying the petition, the Director determined the Petitioner did not demonstrate that the potential prospective impact of his endeavor would extend beyond his potential employers in the broadcast industry and have significant potential to employ U.S. workers or otherwise offer substantial economic effects for the United States. The Director acknowledged the submitted support letters from broadcast professionals, but concluded that they focused on his character, skills, and work ethic, rather than demonstrating the prospective benefits of his endeavor beyond the media and entertainment industry. The Director stated that these letters of support did not "explain how the petitioner's numerous accomplishments constitute recognition of achievements and significant contributions to the industry or field of media and entertainment" and how he more broadly impacted the industry or field. The Director added that the Petitioner did not show that his work served as an impetus for progress in the field, impacted the media and entertainment field, or generated substantial positive discourse in the broader community.

On appeal, the Petitioner asserts that the Director erroneously conflated national importance analysis with second prong analysis under *Dhanasar* related to whether he was well positioned to advance his proposed endeavor, including focusing only on his prior progress in the field. Further, the Petitioner contends that the Director improperly considered only the potential positive economic effects of his proposed endeavor and did not sufficiently consider the potential for his endeavor to bring about advancement in a STEM field to enhance U.S. competitiveness, specifically as it relates to disaster resilience and operational efficiency in broadcasting.

Upon review, we agree that the Director overemphasized whether the Petitioner's proposed endeavor would have substantial positive economic benefits on the U.S. economy and did not sufficiently consider whether it could have national importance based on its potential prospective impact on science, technology, or critical and emerging STEM technologies. In addition, we agree that the Director's analysis was overly focused on the Petitioner's prior achievements in the field, consistent with the second prong of *Dhanasar*, rather the potential prospective national impact of his proposed endeavor. On remand, the Director will consider all evidence in light of these other potential bases for eligibility with respect to national importance. *See* 6 USCIS Policy Manual F.5(D)(1) and (2).

III. CONCLUSION

On remand, the Director should issue a new decision related to national importance consistent with the foregoing analysis. The Director should also analyze the second and third prongs of *Dhanasar*, as necessary, based on their determination with respect to the first prong requirement of national importance, taking into account the potential prospective impact of the Petitioner's proposed endeavor on science, technology, or critical and emerging STEM technologies[2] and whether it would be beneficial to the

[2] *See* 6 USCIS Policy Manual F.5(D)(2). We also note that 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 the 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:

United States to waive the requirements of a job offer and thus of a labor certification. The Director may request any additional evidence considered pertinent to the new determination and any other issues. 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.

- 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. *Id.*