U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30815096

Date: APR. 29, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a technology company, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 the record did not establish that the proposed endeavor was of national importance, that the Beneficiary was well-positioned to advance the proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. 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 dismiss the appeal.

I. LAW

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.

If 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 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. ANALYSIS

The Director found 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. For the reasons discussed below, upon a de novo review of the record, we agree with the Director that the Petitioner has not sufficiently demonstrated national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. The Proposed Endeavor

The Beneficiary is a software engineer, working for the [redacted], the Petitioner, with its WebXT engineering systems team. The Petitioner's support statement, submitted with the initial application, states that the field of endeavor is advanced computing, data processing, and analysis techniques. Specifically, according to the support statement, the Beneficiary is an expert in Cloud technology and at the Petitioner's company works on migrating "large amounts of data from a legacy source control solution to a more well-known source control solution like Git." At the Petitioner's company, he also develops platforms for code changes, helps to gather engineering satisfaction data, develops gating solution to ensure engineers follow best software engineering practices, improves teams' security by standardizing authentication practices, and developed a Git filter, Git-hfs, to help his team migrate data.

In responding to the Director's request for evidence (RFE), the Petitioner added that the Beneficiary also "built [redacted] a cutting-edge AI-powered application that enhances the software development process by providing automated and intelligent assistance to engineers." This application supports the entire software development lifecycle. It can automatically review code and provide suggestions for improvement.

The Petitioner's initial description of his proposed endeavor did not include his work on the [redacted] A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner's initial description of his proposed endeavor did not include his work with the [redacted] only his work on data migration, Git-hfs, and engineering consistency and security. The inclusion of this artificial intelligence application is a distinct addition from the initial proposed endeavor as it significantly expands the endeavor outside the original focus

[1] *See also 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).

on data migration. As the *Dhanasar* framework requires an analysis of the substantial merit and national importance of the specific endeavor proposed by an individual, such an addition is material to their eligibility for a national interest waiver. Also, a petitioner must demonstrate eligibility requirements for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Beneficiary's work with the [redacted] submitted for the first time in response to the RFE, cannot establish eligibility as it was not presented in the original petition. Accordingly, we will only consider the proposed endeavor as described in the initial filing when conducting our analysis under the *Dhanasar* framework.

B. Substantial Merit and National Importance

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the Petitioner's proposed endeavor was of substantial merit. Upon a de novo review of the record, we agree.

Regarding the national importance of the proposed endeavor, the Director's decision acknowledged the importance of advanced computing generally but found that the Beneficiary's work primarily benefited the Petitioner. The Director further found that the Petitioner did not establish that the Beneficiary's work offered original innovations in the field of advanced computing of such significance as to advance the field and result in broader implications for the nation. On appeal, the Petitioner argues that the Director neglected to consider Dr. [redacted] letter. The brief on appeal mentions that the letter from the Beneficiary's skip level manager provides specifics regarding his work on Git-hfs but does not further argue that his work as described in the petition's initial filing is of national importance.[2]

Initially, we note that in determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "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.* Here, the proposed endeavor supports the Petitioner. Yet, the record does not establish how the endeavor would have broader implications in the field, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first *Dhanasar* prong. 26 I&N Dec. at 889.

[2] The bulk of the appeal concerns the Beneficiary's work on [redacted] Again, the introduction of the Beneficiary's work on [redacted] in response to the RFE constitutes a material change to proposed endeavor. *Matter of Izummi*, 22 I&N Dec. at 176. We will only consider the proposed endeavor as described in the initial filing.

Much of the evidence in the record and the Petitioner's arguments focus on the importance of the field of advanced computing and the Petitioner's reach and impact on the computing world.[3] To support the argument for national importance in the initial filing, the Petitioner submitted various articles and reports discussing the critical nature and importance of advanced computing and government memos referencing advanced computing as a critical technology. However, nothing in this evidence mentions the Beneficiary's specific work with the WebXT team. The RFE response further argued that the Petitioner's importance as a multinational corporation informs the national importance of the Beneficiary's work. In support, the Petitioner submitted further articles on the importance of advanced computing. Nevertheless, again none of the articles reference the Beneficiary, Git-hfs, or the WebXT team's work.

The Petitioner also provided a letter from Dr. [redacted] an associate professor in computer information systems at [redacted] University. It discusses the Beneficiary's skills, the general importance and impact of advanced computing, data migration to the Cloud, and the influence of the [redacted] As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* In this letter, Dr. [redacted] does not explain how the Beneficiary's individual work with WebXT impacts the field beyond supporting the functions of the Petitioner. He primarily concentrates on how someone skilled in advanced computing can make a significant impact on U.S. technological growth and corporations generally. He focuses on the Beneficiary's field and neglects to narrow in on the Beneficiary's specific endeavor to explain its national importance. *See Dhanasar*, 26 I&N Dec. at 889 (noting that the focus of prong one is not the importance of the field, industry, or profession but the specific endeavor the noncitizen proposes to undertake).

We observe that the functions described in the petition facilitate the Petitioner's operations as they focus on the migration of the Petitioner's data to new platforms, the development of Git-hfs to assist data migration, gathering employee satisfaction data, and improving engineers' security and consistency. These are tasks that support the Petitioner and help it continue to operate and grow, as they assist in security, product quality, and data storage. However, the evidence does not sufficiently demonstrate how this work itself would affect the advanced computing field more broadly, significantly employ U.S. workers, or have substantial positive economic effects as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that his proposed endeavor will sufficiently extend beyond the Petitioner to affect the field of advance computing more broadly. *Id.* at 893. For the reasons given above, we conclude that the Petitioner has not established the national importance of the proposed endeavor, and therefore does not meet the first prong of the *Dhanasar* analytical framework.

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

We acknowledge that in the RFE response the Petitioner made arguments regarding Git-hfs' potential national impact. However, contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The Petitioner submitted one letter discussing Git-hfs from [redacted] one of the Beneficiary's co-workers at [redacted] In the letter, he discusses the Beneficiary's work and states that he believes Git-hfs can be used by other organizations to consolidate their data. Nevertheless, he provided no further detail and no examples of it being used beyond [redacted] Moreover, the Petitioner presented no further evidence on Git-hfs specifically, besides this letter. Without more documentation supporting counsel's claims, there is not enough in the record to establish the national importance by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Accordingly, for the reasons given above, we conclude that the Petitioner has not established the national importance of the proposed endeavor, and therefore does not meet the first prong of the *Dhanasar* analytical framework.

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 met the requisite first prong of the *Dhanasar* analytical framework, we find that they have 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.