U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 32458401

Date: AUG. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information security analyst, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or an individual of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. 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 that the Petitioner does not qualify for the EB-2 classification based on exceptional ability or as an advanced degree professional, and the record also did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Petitioners bear the burden of establishing eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).[1]

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

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[1] The Petitioner sought classification below only based on exceptional ability. He does not assert on appeal, and the record does not show, he is an advanced degree professional for EB-2 classification purposes. This issue thus is not before us. *See, e.g.*, *Matter of Garcia*, 28 I&N Dec. 693, 693 n.1 (BIA 2023) (holding that issues not raised on appeal are waived); *Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007) (noting that matters not raised previously are waived on appeal).

[2] *See, e.g.*, *Brasil v. DHS*, 28 F.4th 1189 (11th Cir. 2022) (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

The Petitioner seeks EB-2 classification as a person of exceptional ability, which requires him to first satisfy at least half of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). Although the Director found that he met the minimum regulatory criteria, the Director concluded, upon a final merits assessment, the Petitioner did not establish exceptional ability because the record did not show a degree of expertise significantly above that ordinarily encountered in the information technology (IT) security industry. *See* 8 C.F.R. § 204.5(k)(2) (defining "exceptional ability"); *see also* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (discussing a two-part framework for determining exceptional ability).

The remaining issue on appeal is whether he warrants a discretionary national interest waiver under the *Dhanasar* framework, the first prong of which focuses on substantial merit and national importance of the specific endeavor he proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. 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. *Id.*

The Director found that although the Petitioner's proposed endeavor has substantial merit and he is well-positioned to advance his endeavor, the record did not establish that it is of national importance and therefore did not meet *Dhanasar*'s first prong. We conclude that the evidence does not establish that the Petitioner's proposed endeavor has national importance as contemplated by *Dhanasar*.

The Petitioner intends to continue to work as an information security analyst and manager providing various services, including identifying and reducing security risks, developing and managing cybersecurity systems, and providing training on related topics, to all potential customers. The Petitioner does not submit any new evidence on appeal but alleges that the Director failed to consider all relevant evidence in evaluating the claimed national importance of his proposed endeavor.

The record does not demonstrate that the Petitioner's proposed endeavor would have significant potential to employ U.S. workers, have substantial positive economic impact, broadly impact the industry beyond his career, or otherwise have broader economic or societal implications rising to the level of national importance. *See id.* at 889-90. In reasserting that his proposed endeavor has national importance, the Petitioner primarily reiterates his experience and expertise in the IT field, as indicated in his initial and updated "professional plans," resume, as well as an expert letter and other support letters from colleagues, former employers, and prospective recruiters. He also continues to rely on general industry reports and articles and government initiatives addressing the need for improving the U.S. cybersecurity, and claims that his endeavor will contribute to "the national importance of bolstering cybersecurity across companies of all sizes and industries." Given the market potential and the importance of the field as indicated in the industry reports and the government initiatives, he avers that his expertise and increasing demand for well-qualified IT security analysts and managers ideally position him for success that will have broader national implications. However, the referenced evidence focuses on the Petitioner's experience and expertise and relate to *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. For assessing the national importance of a proposed endeavor under *Dhanasar's* first prong, we look to its "potential prospective impact." *Id.* at 889. Thus, as relevant here, we assess whether the specific endeavor he proposes to undertake has broader national significance, rather than his profession or the entire industry in which he proposes to engage based on his qualifications. *Id.* We acknowledge the

Petitioner's expertise, past accomplishments, and willingness to continue to work in several specialized areas of the cybersecurity field. However, although the proposed work as an information security analyst and manager could have a positive impact on his future career and clients, the Petitioner has not persuasively explained, and the record does not demonstrate, how his work in the stated positions would have broader impact on the cybersecurity services industry as a whole and U.S. economy as he claims, beyond his own career, potential employers, and their future customers. The record also does not indicate that he specifically possesses and offers a unique set of novel, innovative skills that were or would be adopted by the industry.

The record, for instance, does not show that the proposed endeavor would have "significant potential to employ U.S. workers" or "substantial positive economic effects, particularly in an economically depressed area," which *may* indicate national importance. *Matter of Dhanasar*, 26 I&N Dec. at 890. The two professional plans generally state that the Petitioner will make a significant economic contribution to the United States by providing exceptional and dedicated services that would protect various systems from security vulnerabilities and ensuring safe cybernetwork environment for his clients. However, the Petitioner does not claim, and the record does not include any evidence specifically indicating that he will operate his own business or hire U.S. workers. Further, other than asserting that his proposed work as an information security analyst and manager will significantly contribute to the U.S. economy and the industry, the Petitioner does not provide any detailed information as to what specific economic benefits his proposed endeavor would generate and how they would be accomplished, such as evidence-based projected revenue, projected employment numbers, or any other economic or societal benefits directly or indirectly attributable to his endeavor. Moreover, he does not claim, and the record does not show, his endeavor would have positive impact in economically depressed areas. Even if the Petitioner were to achieve success by working for multiple IT entities with many clients, as he did in Brazil, he does not specify, and the record does not otherwise demonstrate, how being a comparably successful information security analyst and manager in the United States would rise to the level of national importance as contemplated by *Dhanasar*.

The Petitioner also asserts that he will provide "multifaceted" trainings to those already working in, or interested in joining, the industry and participate in speaking events to further share his knowledge. However, the record does not include any specific probative evidence as to how his proposed educational activities would broadly benefit cybersecurity education. *Id.* at 893 (holding that the noncitizen's work as a science teacher, while it was found to have substantial merit, did not qualify him under the first prong because the evidence did not establish how the proposed teaching work would impact science education more broadly).

While we acknowledge the Petitioner's expertise and aspirations to continue to work as an information security analyst and manager, he has not established with specific, probative evidence that his proposed work has national or industry-wide implications, beyond his own career and future clients. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (holding that in reviewing the record we consider not only the quantity, but also the quality, including relevance and probative value, of the evidence). Considering the foregoing, the evidence does not establish that the Petitioner's proposed endeavor has national importance and he therefore has not met *Dhanasar*'s first prong.

As the identified basis for denial, the Petitioner's inability to satisfy *Dhanasar*'s first prong, is dispositive of this appeal, we decline to reach the remaining appeal arguments as to his underlying

eligibility for EB-2 classification based on exceptional ability and for the national interest waiver under the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

**ORDER**: The appeal is dismissed.