U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34342304

Date: DEC. 31, 2024

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 as a product manager, data foundations, and requests the Beneficiary's 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 qualified for classification as an advanced degree professional and his endeavor has substantial merit, the Petitioner had not established that the Beneficiary's endeavor is of national importance, or that, on balance, 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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. *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 individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The issue on appeal is whether the Petitioner has established the national importance of the Beneficiary's proposed endeavor, as required under the first prong of *Dhanasar*. 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. *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, but the Petitioner did not sufficiently establish it has national importance.

The Petitioner stated that the Beneficiary in his proposed endeavor will define project requirements and work with customers and partners in setting the direction for the Petitioner's platform, with a view to outline how the Petitioner handles, protects, manages, and activates [redacted] data at large scale. The Petitioner indicated that the proposed endeavor involves advancing technologies in artificial intelligence (AI) and machine learning (ML) to safeguard digital spaces and protect users from cybercrimes on [redacted] platforms. The Petitioner asserts that development in this endeavor will help the technology industry to combat bad actors in committing hate crimes and exploiting children online and will have a national and global impact on its over 120 million monthly active users. Further, the Petitioner contends that the Beneficiary's pioneering work has the potential to be adopted by a multitude of industries and companies. In addition, the Petitioner stated that the Beneficiary's proposed endeavor within the gaming and streaming services is of national importance because of its relationship to technological innovation that will lead to economic growth.

The record contains letters of recommendation, industry reports and articles, the Petitioner's corporate report, expert opinion letters, among others.[2] The Director concluded that the record did not establish the national importance of the endeavor as it did not show that the endeavor would have broader implications beyond the impact to the Beneficiary's current employer. On appeal, the Petitioner asserts the Director misapplied the legal standard of review and disregarded probative evidence demonstrating eligibility under the *Dhanasar* framework. The Petitioner maintains that they established the broader implications of the Beneficiary's work including the societal impacts from the important innovations utilizing "AI and ML and communications and network security technologies to automate cybercrime detection and monitoring for hate speech and child abuse content as well as enhance platform security and protection within the suite of [redacted] products and services."

The standard of proof in this proceeding is preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25

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

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 agree with the Director's evaluation of the evidence, and conclude the Petitioner has not established, by a preponderance of the evidence, that the proposed endeavor has national importance as contemplated under the *Dhanasar* framework.

In *Dhanasar* we said 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 "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We recognize the value of the claimed technological innovations and the importance of STEM related professions; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. Although we acknowledge that the Beneficiary's role as a product manager, data foundations is important in further developing the Petitioner's platforms and contributing to the prevention and detection of cybercrime, the Petitioner has not demonstrated that the economic implications and technological advancements resulting from the Petitioner's operations would be directly attributable to the Beneficiary's particular role as a product manager, data foundations. The issue here is not the broader implications of the Petitioner's innovations or the potential utilization of its products by the industry, but rather the potential prospective impact of the Beneficiary's specific proposed work as a product manager, data foundations.

We observe that the functions described in the letter from the Petitioner's director, product management, data and AI, and the Beneficiary's current supervisor, shows that his work facilitates the Petitioner's operations as it focuses on molding the Petitioner's software to its clients' needs. These are tasks that support the Petitioner, as they allow the Petitioner to sell its platform. Nevertheless, the evidence does not sufficiently demonstrate how the Beneficiary as a single employee would affect the industry more broadly. In addition, the Beneficiary's supervisor also explained that he managed a team of 15 product managers including the Beneficiary. Thus, it is not clear the broader implications of the Beneficiary's proposed endeavor when he is one out of 15 product managers in this group alone and several engineers working under these product managers. The Petitioner did not provide sufficient evidence of the proposed endeavor regarding the specific role the Beneficiary will have in the prevention and detection of cybercrime in the streaming services that will have national importance. Further, the Petitioner's description of the Beneficiary's proposed endeavor lists several duties the Beneficiary will perform in his role as product manager, data foundations and it is not clear how much time the Beneficiary will spend on preventing cybercrime versus working on the several other duties listed for his proposed endeavor. The Petitioner must resolve these ambiguities in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

We note that the Petitioner contends on appeal that given its user base of approximately 120 million monthly active users globally and an estimated 30 million active users in the United States, the Beneficiary's proposed endeavor to "protect all users, regardless of age, gender, race, sexual orientation, and other personal factors, from bullying, hate speech, and abuse is absolutely in the national interest" as it ensures gaming is a safe space for all users. Nevertheless, the Petitioner cannot

rely on its market share alone to claim the Beneficiary's work is nationally important. It must show how the functions and tasks *carried out by the Beneficiary* coalesce into a nationally important endeavor.

On appeal, the Petitioner states that the Director's conclusions regarding the probative value of the letters of recommendation was "problematic" since the Director "suggested" the letters describing the prospective impact of the Beneficiary's work are less persuasive than letters that discuss the Beneficiary's past accomplishments. The Petitioner's assertion that the Director did not analyze the probative value of the letters of recommendation is a mischaracterization of the decision. In concluding that the recommendation letters did not establish the national importance of the proposed endeavor, the Director acknowledged the letters but noted they were general in nature where they praised the Beneficiary's abilities but do not offer persuasive detail concerning the impact of his proposed endeavor. Upon review of the letter of recommendation from the Beneficiary's current supervisor, the letter discusses the Beneficiary's achievements and skills and lists his current duties with the Petitioner but does not sufficiently show the broader impact of his work. The letter contends that by "furthering AI and ML technology in the detection, moderation and prevention of cybercrimes, [the Beneficiary's] work is critical to the wider technology industry," but the author did not provide specific information on the Beneficiary's proposed endeavor and its national importance.

Finally, the Petitioner did not show how the Beneficiary's position as a product manager, data foundations has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. On appeal, the Petitioner does not address this issue and did not sufficiently explain or demonstrate how the Beneficiary's employment alone would have any projected economic impact or job creation. Without such evidence, the record does not show any benefits to the U.S. regional or national economy resulting from the Beneficiary's services or position would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

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) (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, 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.