U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34822152

Date: FEB. 13, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an individual who works in the field of cybersecurity, seeks employment-based second preference (EB-2) immigrant classification 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Texas Service Center denied the petition, concluding that, while the record established the substantial merit and national importance of the Petitioner's proposed endeavor, it did not sufficiently demonstrate that he is well positioned to advance the endeavor or 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. 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 entry of a new decision consistent with the following analysis.

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.

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." *Id.* 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:

- 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an advanced degree professional. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

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 Petitioner intends to develop a company providing cybersecurity services. In a request for evidence (RFE), the Director stated that the Petitioner met the requirements of the first prong of the *Dhanasar* framework. In evaluating whether the Petitioner's endeavor has substantial merit, the Director provided the following (quoted as written):

> The petitioner claims he intends to work as a Chief Executive Officer/Entrepreneur in the field of Cyber Security/Internet Defense, based loosely on statements garnered from the petitioners proposals within his:
>
> - *Petitioner Letter*
>   - *"Development, consulting, and training services to the private and public sectors pertaining to cyber security for Critical Infrastructure Control Systems."*
>
> - *Petitioner's Curriculum Vitae CV*
>   - *"I am convinced that with my permanent residency in the United States I will be able to create a cyber security and internet defense company..."*
>
> This criterion has been met.

[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 to be discretionary in nature).

As to whether the Petitioner's endeavor has national importance, the Director provided the following (quoted as written):

> In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead USCIS must focus on "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, the AAO noted that they "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. AAO also stated that "[a]n 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."
>
> The criterion has been met.

The Director provided no analysis in either the RFE or the denial decision to support her determination that the Petitioner qualifies under the first prong of the *Dhanasar* framework. The record contains evidence demonstrating that the Petitioner intends to operate a business in [redacted] Florida, providing services to enhance cybersecurity within the critical infrastructure control systems of the company's clients. The RFE, however, did not acknowledge the Petitioner's specific endeavor or any evidence submitted to establish its substantial merit or national importance. The Director's subsequent denial did not acknowledge additional evidence submitted relating to the proposed endeavor, including a business plan. Review of the evidence indicates that the Petitioner relies on the importance of the field of cybersecurity to establish the substantial merit and national importance of his proposed endeavor. While we agree that an endeavor to enhance the cybersecurity of businesses has substantial merit, the Director did not sufficiently address how the Petitioner's endeavor to operate a small cybersecurity business rises to the level of national importance. On remand, the Director should fully analyze the evidence submitted to determine whether the Petitioner has met the requirements of the first prong of the *Dhanasar* framework.

The Director's analysis of the second prong under the *Dhanasar* framework also contains deficiencies relating to analysis of the evidence. The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are 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. *Id.* at 890.

In denying the petition, the Director listed evidence considered under the second *Dhanasar* prong and then generally listed evidence or information that the Petitioner purportedly did not provide. The Director did not provide an analysis of evidence submitted initially or in response to the RFE. The Director also made inaccurate statements concerning the Petitioner's previous experience. For example, the Director asserted that the Petitioner's "experience is not in (or sufficiently similar to) the proposed endeavor"; the record, however, shows that the Petitioner has previous educational and work experience in the field of cybersecurity and intends to continue working in that field in the United

States. In addition, although the record contains evidence of the Petitioner's cybersecurity business in Colombia, the Director stated that there "is no documentation in the record indicating that the petitioner has ever owned or established a business." As another example, the Director stated, without explanation, that an expert opinion letter was "not probative," and the denial did not provide an analysis of recommendation letters submitted. Because the Director did not discuss specific evidence or the Petitioner's proposed endeavor itself, it is not clear how she reached conclusions concerning the Petitioner's positioning to advance the endeavor. On remand, the Director should fully analyze the evidence submitted to determine whether the Petitioner has met the requirements of the second prong of the *Dhanasar* framework.

The Director's analysis of the third prong under the *Dhanasar* framework contains similar deficiencies relating to analysis of the evidence. The third 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. *Id.* at 890-91.

The Director's decision did not provide any analysis of why the Petitioner did not meet the requirements of the third prong of the *Dhanasar* framework, stating only that the Petitioner "has not established 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."

Upon review, we conclude that the Director's decision lacks a detailed analysis of the evidence submitted and does not fully explain the reasons for the unfavorable conclusions. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Accordingly, we find that the Petitioner was not adequately informed of the Director's reasons for determining that he did not meet the requirements of the second or third prongs of the *Dhanasar* framework. In addition, the Director's finding that the Petitioner met the first prong of this framework similarly lacks sufficient analysis.

Accordingly, we will withdraw the Director's decision and remand the matter to the Director for further consideration and issuance of a new decision. On remand, the Director should review the entire record, including the Petitioner's response to the RFE and his submission on appeal, to determine whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director should consider the Petitioner's evidence and arguments provided in support of each prong and provide an analysis of that evidence to support the conclusions reached.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.