U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37174400

Date: FEB. 26, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a software engineer, seeks employment-based second preference (EB-2) immigrant classification as an alien of exceptional ability, 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 that the record 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 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

[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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined the Petitioner qualified for EB-2 classification as an advanced degree professional by virtue of his Master of Science degree from [redacted] We agree. The only issue on appeal is whether he qualifies for a waiver of the job offer requirement in the national interest.

The Petitioner initially described his proposed endeavor as developing "more advanced defense mechanisms with empirical or theoretical guarantees in order to enhance the resilience and reliability of machine learning systems." The Petitioner stated he would pursue his proposed endeavor as a software engineer for his employer, [redacted] by developing secure infrastructure for [redacted] products and by conducting research with professors at [redacted]

In response to the Director's request for evidence (RFE), the Petitioner specified that he would continue to "investigate the security of machine learning models, including large language models, multi-modal machine learning models, and large foundation models, in order to identify the vulnerabilities of these models and to design advanced defense mechanisms to enhance the security of these AI [Artificial Intelligence] systems."

A. Substantial Merit and National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Id.* The Director determined the Petitioner's proposed endeavor has substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or has other broader implications indicating national importance. *Id.* at 889-90. The Director determined the Petitioner did not establish that his proposed endeavor would have broader implications in his field beyond the individuals and entities using his work.

On appeal, the Petitioner asserts the Director erroneously indicated that his proposed endeavor could constitute "unauthorized access or security violation" and that aspects of his proposed endeavor outside of any proposed employment are not relevant. We agree and withdraw these portions of the Director's decision.

The Petitioner also claims the Director did not properly review his support letters. The Petitioner initially submitted letters from N-G-[2] and Y-Z-. N-G- summarizes the Petitioner's work in formulating two novel threat models and devising defenses against attacks to supervised learning and recommender systems. N-G- states the Petitioner showed that established defense methods failed to defend against the formulated attack schemes and the Petitioner's methods outperformed existing state-of-the-art defense systems against poisoning attacks. N-G- expresses support for the Petitioner's continued work, but does not discuss any potential prospective impact of the Petitioner's proposed endeavor.

Y-Z- states he has cited the Petitioner's work on [redacted] which "highlights that [the Petitioner] is a valued participant in the scientific discourse." Y-Z- opines that the Petitioner's work "is essential in enhancing the development of machine learning systems to bolster U.S. national security and ensure the security of the range of industries that implement machine learning." Y-Z- recommends that the Petitioner be allowed to carry out his inquiries without impediment, but also does not discuss any potential prospective impact of the Petitioner's proposed endeavor.

In response to the RFE, the Petitioner submitted additional support letters from Y-C-, R-L-, P-G-, C-C-, A-D-, M-S-, J-J-, and M-P-. J-J- states the Petitioner's proposed research "addresses several key challenges in the field of AI and machine learning security, making significant contributions to the national interest." J-J- further asserts the Petitioner's proposed research will benefit the regional and national economy by protecting businesses and industries that rely on AI and machine learning systems from costly cyberattacks and intellectual property theft. J-J- does not specify, however, how the Petitioner's proposed endeavor would extend beyond his employer, his employer's customers, and other researchers to impact his field more broadly on a level commensurate with national importance. J-J- also does not indicate how the economic benefits he describes would be directly attributable to the Petitioner's proposed endeavor and result in substantial positive economic effects indicative of national importance.

Y-C-, R-L-, P-G-, C-C-, A-D-, and M-P- praise the Petitioner's past work and express confidence in his ability to advance research in machine learning security, but do not discuss any potential prospective impact of the Petitioner's proposed endeavor. M-S-, Immigration and Compliance Manager at [redacted] lists the Petitioner's job duties and states the Petitioner's "work enables [redacted] to apply industry standard security to our company's products" and "helps protect our customers." M-S- does not discuss the Petitioner's proposed endeavor.

The Petitioner initially submitted copies of five peer-reviewed conference articles he co-authored and evidence that his articles have been cited numerous times by other researchers. In response to the RFE, the Petitioner submitted evidence that his work has been cited by researchers in other countries, had been cited by additional research teams since his initial submission, and that the majority of citations to his articles were by independent research teams.

In response to the RFE, the Petitioner also submitted a "Fact Sheet: Biden-Harris Administration Announces Key AI Actions Following President Biden's Landmark Executive Order," the National Artificial Intelligence Research and Development Strategic Plan, a Department of Homeland Security

[2] We use initials to protect the privacy of the referenced individuals.

document entitled Promoting AI Safety and Security, General Services Administration Instructional Letter on Security Policy for Generative Artificial Intelligence (AI) Large Language Models (LLMs), and articles on cyberattacks on driverless cars. These documents address the importance of AI security, but do not address the Petitioner's specific proposed endeavor. Our assessment of national importance does not focus on the importance of a field in general, but instead "focuses on the specific endeavor that the foreign national proposes to undertake." Id. at 889.

The record documents the Petitioner's past accomplishments and shows he has conducted research and published articles which have been cited numerous times by other researchers. The evidence does not, however, establish that the Petitioner's proposed endeavor would have substantial positive economic effects or have other broader implications in his field on a level commensurate with national importance. Consequently, the Petitioner has not demonstrated that his proposed endeavor has national importance.

B. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of his specific proposed endeavor and he does not meet the first prong of the *Dhanasar* framework. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility under the second and third prongs of 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

The Petitioner has not established the national importance of his proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.