U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35821413

Date: FEB. 26, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, [redacted] seeks to employ the Beneficiary as a senior software engineer. [redacted] 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 the classification as a member of the professions holding an advanced degree, the Petitioner had not established 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 classification, a petitioner must establish a beneficiary is either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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 first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Petitioner intends to employ the Beneficiary as a senior software engineer in a full-time, permanent position. The Director found that the Beneficiary qualifies for the underlying EB-2 classification. 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, we conclude that the Petitioner has not sufficiently demonstrated the Beneficiary's proposed endeavor's national importance under the first prong of the *Dhanasar* analytical framework. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

In denying the petition, the Director acknowledged that the Beneficiary's proposed endeavor has substantial merit and that he is well-positioned to advance it. The Director determined, however, that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director's decision was incorrect, stemming from a significant misapplication of the legal standard and a failure to consider key probative evidence supporting the Beneficiary's eligibility under the *Dhanasar* framework.

The Beneficiary proposes to utilize "advanced computing architecture and human-machine interface principles to securely expand and enhance the user interface (UI) framework and user experience (UX) features that support [redacted] cloud-gaming and streaming infrastructure and services." The Petitioner asserts that the Beneficiary's proposed endeavor will deliver substantial benefits, generating billions of dollars in revenue and establishing the United States as a leader in technological advancements through the Beneficiary's innovative contributions. The Petitioner also highlights the evidence submitted in support of the petition and in response to the Director's request for evidence to underscore the sufficiency of the submitted evidence. The record includes an expert opinion letter, letters of recommendation, and industry reports and articles.

The Petitioner argues that the tools developed by the Beneficiary will significantly enhance [redacted] offerings and brand and "will directly translate into high volumes of sales and revenue, thereby continuing to sustain" the Petitioner's multibillion-dollar revenue. To evaluate whether the Beneficiary's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of the Beneficiary's work. In *Dhanasar*, we 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.* We 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." *Id.* at 890. Here, the record does not include adequate corroborating evidence, to show that the Beneficiary's specific proposed endeavor offers broader implications in the digital entertainment and gaming field, enhancements to U.S. societal welfare, or substantial positive economic effects for the country that rise to the level of national importance. While we acknowledge that the Beneficiary could help the Petitioner generate substantial revenue, the Petitioner has not sufficiently explained or demonstrated how the Beneficiary's employment would independently lead to economic growth or job creation nationwide.

The Petitioner claims that the Beneficiary's endeavor will significantly contribute to the growth, efficiency, and innovation of the overall gaming industry. The Petitioner further claims that the Beneficiary's work will support the "consistent delivery of an excellent gaming experience on [redacted] platforms, which will in turn contribute to the success of the U.S. and global economy." In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the Petitioner has not demonstrated that the Beneficiary's proposed endeavor of working as a senior software engineer will have a significant impact beyond the company itself to benefit the regional or national economy, reaching the level of substantial economic effects as contemplated by *Dhanasar*. *Id.* at 890.

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 monthly active users in the United States, the Beneficiary's proposed endeavor to "expand and enhance the UI framework and UX features for [redacted] gaming and streaming services is absolutely in the national interest." 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.

The Petitioner asserts that the Beneficiary's proposed endeavor aligns with national initiatives, particularly in advancing critical and emerging technologies such as advanced computing and human-machine interface. The Petitioner further claims that the Beneficiary's focus on advancing systems administration and cybersecurity applications by leveraging artificial intelligence capabilities directly supports U.S. government efforts to strengthen national security. We acknowledge the importance of advancing critical and emerging technologies as well as cybersecurity applications, thus we agree with the Director's decision that the Petitioner has demonstrated the Beneficiary's proposed endeavor's substantial merit. However, the Petitioner has not offered sufficient information and evidence to demonstrate that the proposed endeavor's prospective impact will rise to the level of national importance. Moreover, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. As previously mentioned, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner has not sufficiently explained how the Beneficiary's endeavor would have a broad impact, rising to the level of national importance. 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 senior software engineer. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding the projected U.S. economic impact or job creation directly attributable to the Beneficiary's future work, the record does not show that the benefits to the regional or national economy resulting from the Beneficiary's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 890.

For the aforementioned reasons, the Beneficiary's proposed endeavor does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of the Beneficiary's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding its eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 conclude that the Petitioner has not established that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.