U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36286142

Date: JAN. 27, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a global financial and investment services company, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 the Petitioner did not demonstrate the Beneficiary merits a discretionary waiver of the job off requirement 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 beneficiary must first establish they are either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

If a petitioner demonstrates the beneficiary's 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
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Beneficiary qualifies for the underlying EB-2 immigrant classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, would be in the national interest. Upon de novo review, we agree with the Director's conclusion that the Petitioner demonstrated the substantial merit of the Beneficiary's proposed endeavor, but did not establish its national importance under the first prong of the *Dhanasar* analytical framework

The first 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.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner intends to employ the Beneficiary in the position of vice president to utilize artificial intelligence (AI) including "machine learning and deep learning methodologies to develop and optimize critical financial models that forecast price movement and competitor pricing to maximize [p]rofit and [l]oss ("PnL") and increase liquidity for account holders." More specifically, the Petitioner asserted that the Beneficiary will "develop and optimize various financial models, including customer pricing, market impact, win-chance, and basis yield models. . . which would enable the Petitioner to quickly, accurately, and securely execute critical financial transactions while minimizing risks and optimizing investment strategies based on pricing forecasts." According to the Petitioner, this work would enhance the ability of financial institutions to more reliably and securely facilitate the transfer of funds, and support the stability of the U.S. economy and global financial system. Additionally, they asserted that the Beneficiary's work directly contributes to the Petitioner's sustained profits, and improved customer confidence in their investment and live-trade decisions. Accordingly, the Petitioner claimed that the Beneficiary's work would allow it to contribute significant revenue to the U.S. economy and to maintain its national and international standing as a leader in the financial field.

In support of the Beneficiary's endeavor, the Petitioner submitted multiple recommendation letters from the Beneficiary's colleagues and manager, an expert opinion letter, and several industry articles and government publications regarding the financial services field and its designation as a critical

[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).

infrastructure sector, the importance of AI and machine learning methodologies as well as its application in strengthening the financial sector, and governmental interest in expanding emerging technologies including AI and machine learning methodologies.[2]

After review, the Director concluded that the record showed the Beneficiary's endeavor has substantial merit, but the Petitioner did not establish the endeavor was nationally important. Specifically, while acknowledging the impact of the Beneficiary's work to the Petitioner's operations, as well as the Petitioner's overall importance to the financial services industry, the Director nonetheless concluded that that the record did not demonstrate that the broader implications of the Beneficiary's specific work would impact the industry at a level commensurate with national importance, or otherwise result in substantial economic effects contemplated in *Dhanasar*. *See Dhanasar* at 890.

On appeal, the Petitioner submits a brief as well as copies of its initial filing and response to the Director's request for evidence (RFE), and contends that the evidence in the record establishes the Beneficiary's eligibility for the requested national interest waiver. The Petitioner also generally asserts that the Director applied a heightened standard of proof in their evaluation of the record, did not properly consider the evidence establishing the Beneficiary's eligibility, and incorrectly applied relevant laws and regulations relating to the adjudication of national interest waivers. As an example of this, the Petitioner contends that the Director's determination that the Beneficiary's work appeared to primarily benefit his employer and would not sufficiently extend beyond its clients to impact the field more broadly is incorrect and against policy, noting that the USCIS policy does not mandate that "the beneficiary's endeavor must provide a greater benefit to the U.S. nationally than to the beneficiary's employer." And the Petitioner contends, that given its standing within the financial industry which allows it to contribute significant revenue to the U.S. economy, the Beneficiary's contributions to the company are nationally important as they allow it to continue to impact the U.S. economy. The Petitioner also claims that the Director erroneously focused on the Beneficiary's job title rather than nature of his work, and did not address or evaluate the recommendation letters and expert opinion letters submitted, which the Petitioner believes established the national importance of the endeavor.

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 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 conclude that, while the Petitioner has established the substantial merit of the Beneficiary's endeavor, the record does not show, by a preponderance of the evidence, that the Beneficiary's endeavor will result in broader implications to the industry at a level commensurate with national importance.

In *Dhanasar* we explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar* at 889. Accordingly, we determined that teaching activities would not rise to the level of having national importance because they would generally not impact a field more broadly. *Id.* at 893. Here, we agree that the record

[2] While we do not discuss every piece of evidence in the record, we have reviewed and considered each one.

establishes Beneficiary's proposed endeavor will support the Petitioner's operations, but does not show that his work will result in broader implications to the field or otherwise result in substantial positive economic effects commensurate with national importance.

As a preliminary matter, we disagree with the Petitioner's contention that the Director's decision focused on the Beneficiary's position title rather than the nature of his proposed endeavor. The Director's decision contains language explicitly referencing the Beneficiary's objectives to utilize machine learning and deep learning methodologies to develop critical financial models for the Petitioner. While we acknowledge the brevity in which the Director discussed the Beneficiary's endeavor, the Director's decision does nonetheless discuss the Beneficiary's specific role and endeavor, beyond just his job title. Moreover, for the reasons discussed herein, we conclude that the evidence in the record does not support the Petitioner's assertion that the Beneficiary's endeavor is nationally important. And therefore, any alleged error is, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))). It is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

The Petitioner contends that the Beneficiary's work is national important because "implementation of similar solutions could be effectively applied across various institutions within the industry and are not just isolated to [the Petitioner]," asserting therefore that the Beneficiary's work "very clearly will have broader national implications and indeed potentially global implications within the financial services sector." However, the Petitioner has not provided an explanation as to *how* his work will result in broader implications, or otherwise be implemented across various institutions. Without an explanation as to *how* the Beneficiary's solutions "could be effectively applied" the Petitioner has not met its burden of proof. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

And, on appeal, the Petitioner asserts that the Beneficiary's proposed endeavor "will certainly play a critical role in ensuring the stability and integrity of the financial services sector" given the Petitioner's $1.4 trillion in assets under management. However, the Petitioner cannot rely on its market share and size alone to establish the importance of the Beneficiary's proposed endeavor. We acknowledge the importance of the Petitioner's operations; however, the Petitioner cannot rely on its broader operations and impact to the United States alone to establish the importance of the Beneficiary's specific work.[3] The Petitioner should show how the Beneficiary's *specific* work would result in broader implications to the industry at a level commensurate with national importance, or otherwise result in substantial

[3] Benefits to a specific employer alone, even an employer with a national footprint, are not sufficiently relevant to the question of whether a person's endeavor has national importance. At issue is whether the petitioner can demonstrate that the person's own individual endeavor stands to have broader implications, such as for a field, a region, or the public at large. *See generally* USCIS Policy Alert, PA-2025-03, *Second Preference Eligibility for National Interest Waiver Petitions* (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf

positive economic effects. Here, while the record contains multiple letters praising the Beneficiary's work and his development of financial models which have improved the Petitioner's productivity, efficacious, and ability to ensure profitable transactions, beyond asserting that the Petitioner's work could impact the industry given the Petitioner's market share, the Petitioner has not explained how his work would result in broader implications to the field.

The testimonial evidence in the record, including the multiple letters of recommendation and the expert opinion letter also do not provide sufficient explanation as to *how* the Beneficiary's work would impact the field. For example, the letter from L-S commends the Beneficiary's "profound expertise in machine learning and deep learning methodologies [which has] enabled [the Petitioner] to advance its financial modeling capabilities, optimize customer pricing strategies, and effectively and proactively manage market risks." However, L-S- does not provide sufficient explanation regarding the prospective benefit of the Beneficiary's work to the field, or explain how it will lead to broader implications commensurate with national importance.

Similarly, the expert opinion letter provides detailed explanation regarding the importance of the financial services field and the importance of AI and machine learning and its application to the field, but does not provide sufficient explanation as to how the Beneficiary's *specific* work would impact the field. Instead, the expert opines that "his field of endeavor not only improves the compliance, risk management, customer trust, and financial stability of a major US employer but also promotes the security and stability of the US financial sector as a whole." However, the letter does not provide sufficient explanation as to *how* the Beneficiary's work would impact the sector more broadly. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*, *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

We also acknowledge the evidence in the record pertaining to the Beneficiary's prior projects executed for the Petitioner, including the development of a win chance model and market impact model which enhanced the company's capabilities and market reach. While the letters in the record commend the Beneficiary for establishing internal procedures and processes that have helped the Petitioner ensure the successful transfer of its clients' assets and profits, the record does not identify whether these processes would lead to national or global implications within his field commensurate with national importance, or could be analogous to the "medical advances" contemplated in *Dhanasar*. *See Dhanasar* at 889. Moreover, while we acknowledge the Beneficiary's past accomplishments and his successful career, a beneficiary's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor.

On appeal, the Petitioner also asserts that the Beneficiary's endeavor "will help advance the U.S. interest in attracting and retaining STEM workers, which is critically important given the shortage of qualified workers in the field." However, a claimed shortage of workers alone is not sufficient to

establish the national importance of the Beneficiary's specific work. Similarly, the Petitioner contends that the record contains evidence of the federal government's interest in the advancement of U.S. capabilities in critical and emerging technologies, which they assert the Beneficiary will accomplish "given his efforts to develop and integrate machine learning and deep learning methodologies into the financial models that form the foundation of revenue generation strategies and risk management frameworks within the financial services industry." However, the Petitioner has not established, for example, how the Beneficiary's work will meaningfully impact these broad governmental initiatives. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. We recognize the value of such technological innovations and importance of emerging technologies; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. As stated, the relevant question is not the importance of the field, industry, or profession in which the Beneficiary may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889.

Additionally, we also agree with the Director's conclusion that the record does not establish that the Beneficiary's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar* at 890. Although the record discusses the economic impact of the financial services sector, and the collective economic impact of the Petitioner's operations, the Petitioner has not shown how the Beneficiary's specific work would result in substantial economic benefits discussed in *Dhanasar*, or provided sufficient description of how the Beneficiary's specific work contributed to the company's economic impact. *Id.*

For all the reasons discussed, the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the first prong of the *Dhanasar* analytical framework, we conclude that it has not established the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve their eligibility and appellate arguments under *Dhanasar*'s remaining prongs. *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).

ORDER: The appeal is dismissed.