U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29565241

Date: JAN. 29, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer science research assistant, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *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).

The Director of the Nebraska 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 Petitioner thereafter filed a combined motion to reopen and reconsider which the Director dismissed . 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 dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petition 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. 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.

Whilst neither the statute nor the pertinent regulations define the term "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 USCIS may as a matter of discretion

grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate 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 petition 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

To satisfy the *Dhanasar* analytical framework's first prong, the Petitioner must demonstrate that their proposed endeavor has both substantial merit and national importance. This prong 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. The record here supports the Director's determination that the Petitioner's proposed endeavor, applying data science and machine learning as a computer science research assistant, had substantial merit.

But, when evaluating national importance, we shift the focus from the importance of the field or industry within which a petitioner will work to "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further 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.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. In support of their claim that they can satisfy the *Dhanasar* analytical framework's first prong, the Petitioner submitted letters of recommendation and employment verification from current and former collaborators and employers respectively, a printout from the USCIS website, a copy of the O*NET entry for computer and information research scientists, copies of the Petitioner's publications, copies of the Petitioner's educational documents, and industry reports.

The Petitioner's proposed endeavor is essentially to serve as a computer science research assistant in the United States. They are petitioning so that they may be able to provide their services to employers in the United States. In essence, the Petitioner's endeavor would place the Petitioner in a free agent posture to any U.S. employer who requires their services. This is akin to a job search. And the purpose of a national interest waiver is not to facilitate a petitioner's U.S. job search.

And even if we considered the Petitioner's proposed endeavor in a manner which elevated it from a simple job search, we would still conclude that it did not rise to a level of national importance. The Petitioner stated their endeavor could "spur business growth, generate tax revenue and job creation, improve quality of life, and protect and improve the environment." But it is unclear from the evidence in the record that the work of a single computer science research assistant would have a significant impact on the field beyond its immediate sphere of influence. The evidence in the record does not highlight how the work of one professional could have broader implications that implicate business growth, tax revenue, job creation, quality of life, or environmental issues in a nationally important manner. For example, the Petitioner mention job creation and tax revenue generation as potential positive effects of their proposed endeavor. But the record contains insufficient documentation to support or even describe job creation of any significance such that it rose to a level commensurate with national importance. Moreover, the Petitioner has not identified where they intend to establish their endeavor, which impedes an evaluation of whether the proposed job creation would address employment in economically depressed areas. The record is similarly silent about the other potential positive economic effects identified by the Petitioner, such as tax payments, which inhibits an evaluation of whether the Petitioner's indicated benefits from taxation rise to the level of national importance. So the record contains insufficient evidence to support the positive economic effects the Petitioner expects their proposed endeavor to realize.

On appeal, the Petitioner makes special mention of their single occasion computer science research assistance providing machine learning and data science services to [redacted]. [redacted] is a National Aeronautics and Space Administration (NASA) campaign consisting of a multi-year field experiment to observe snow throughout the winter season in various landscapes. The aim is to advance global snow science to potentially lead to a spaceborne snow mission concept. We recognize that the Petitioner has participated with [redacted]. But it is not clear how this one-time participation supports or is related to the Petitioner's endeavor to serve as a computer science research assistant with any willing United States employer. For example, none of the generic duties from the Department of Labor (DOL) Occupational Information Network (O*NET) entry for computer and information research scientists the Petitioner lists to describe their proposed endeavor relate to [redacted] or snow science.

The Petitioner's professional plan identifies numerous "domains" where the Petitioner's work with data science and machine learning as a computer science research assistant would be beneficial such as renewable energy (biofuel production), education, and science. The need for a computer science research assistant in [redacted] and projects like it in renewable energy (biofuel production, education, and science does not render any computer science research assistant endeavor working with data science and machine learning nationally important without an evaluation of the prospective positive impact of the work on the project evaluated through its broader implications or positive economic effect. And the evidence in the record does not demonstrate any specific activities or projects the Petitioner would provide their services to which would permit us to evaluate the prospective positive impact of the work on the project(s) evaluated through their broader implications or positive economic effects.

The manifest thrust of the Petitioner's claim of eligibility for the act of discretion to waive the requirement of a job offer, and thus a labor certification, in the national interest comes from the Petitioner's claims regarding their profession's importance, their past work as a computer science research assistant, and their dedication to their field. But these attributes, critical as they may be for an endeavor's success, are not germane to the question of whether a proposed endeavor elevates to a position of national importance. We are not concerned with the individual petitioner when evaluating the first prong of the *Dhanasar* analytical framework; we are focused on the petitioner's proposed endeavor. The success of the endeavor, or attributes that could tend to make the endeavor more successful, are consequently not as important as determining whether the proposed endeavor itself stripped away from a petitioner, has attributes that would highlight the prospective positive impact of its broader implications or positive economic effects rising to a level of national importance.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining arguments concerning eligibility under the remaining *Dhanasar* prongs. *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-I*, 26 I&N Dec. 216, 526n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise eligible). So we conclude the Petitioner has not established that they are eligible for or otherwise merit a national interest waiver of the job offer requirement, and thus of a labor certification. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.