U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32718790

Date: JULY 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer and privacy professional, seeks 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 Texas Service Center denied the petition, concluding the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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 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." Section 203(b)(2)(B)(i) of the Act. 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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

In his response to the Director's request for evidence (RFE), the Petitioner described his proposed endeavor as consulting on privacy matters for public and private sector entities. The Petitioner explained he would help clients understand and comply with privacy laws, support privacy litigation, contribute to developing privacy policies and legislation, conduct privacy research and make publications, ensure proper leverage of privacy-enhancing technology, support organizations in navigating Artificial Intelligence (AI) governance of their products, incorporate privacy by design principles in product development, and conduct privacy impact assessments.

The Director determined that the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree. We agree. The only issue on appeal is whether he qualifies for and merits a waiver of the job offer requirement in the national interest.

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. *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.

The Director concluded, however, that the Petitioner did not establish the national importance of his proposed endeavor. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* at 889. 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 his proposed endeavor would extend beyond his employer or individuals he would directly work with to have a broader impact on his field indicative of national importance.

On appeal, the Petitioner asserts the Director erroneously considered that the Petitioner's proposed endeavor did not have significant potential to employ U.S. workers or other substantial economic effects. The Petitioner claims substantial economic effects are not required to establish national importance. We agree. As we stated in *Dhanasar*, "[e]vidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required" to show substantial merit and national importance. *Id.* at 889.

The Petitioner also claims the Director did not consider that his proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. In his initial letter submitted with his petition, the Petitioner asserted his proposed endeavor aligned with privacy issues of importance to state and federal government entities, such as state laws governing privacy, and federal initiatives to protect privacy. The Petitioner submitted articles on these issues including Colorado Privacy Act rules, California Consumer Privacy Act regulations, Delaware consumer data privacy bill, States leading the regulation of Artificial Intelligence (AI), Federal Trade Commission (FTC) privacy restrictions on Facebook, Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities, FTC actions against commercial surveillance and lax data security practices, Biden-Harris Administration actions to protect youth mental health, safety, and privacy online, progress on federal privacy legislation, President Biden's Executive Order on AI, Biden-Harris Administration securing voluntary commitments to manage AI risks, and President Biden's comments on privacy issues during one of his State of the Union speeches.

These articles attest to the importance of privacy rights and regulation at the state and federal level, but they do not address the Petitioner's proposed endeavor. Our assessment of national importance does not focus on the importance of issues to a field in general. Rather, our assessment "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of his proposed endeavor. Beyond working in his field, the Petitioner does not specify how his consultancy would extend beyond individual entities to impact privacy law and regulation more broadly on a level commensurate with national importance. *See id.* (explaining that when assessing national importance "we look for broader implications").

The Petitioner asserts his proposed endeavor will impact both his potential employer and national interests by directly benefiting his potential employer while also helping to safeguard Americans' personal data in the hands of his employer. The Petitioner claims these dual benefits align with the structure of the EB-2 classification and national interest waivers, which requires employment-based classification eligibility first before a waiver of the job offer may be considered. The Petitioner asserts employment "qualifies as a starting point where benefits may be provided under the law before such benefits or national importance *trickles down* to the United States (her government and/or people)" (emphasis in original). The Act does not support the Petitioner's claim. The fact that eligibility for EB-2 classification must be established before a waiver of the job offer requirement may be considered in the national interest does not indicate that the national interest is less important than any established or potential employment of foreign nationals. Under the Act, a waiver of the job offer requirement may only be granted when "the Attorney General deems it to be in the national interest." Section 203 (b)(2)(i) of the Act.

The Petitioner further asserts that his proposed endeavor has national and global implications within the data privacy and protection field. In response to the RFE, the Petitioner claimed his proposed endeavor has national and global implications because it concerns safeguarding the personal data of Americans locally or internationally. The Petitioner stated, "effective compliance with national, State or international privacy laws is one of the national importance of the Petitioner's proposed endeavor." The Petitioner submitted articles on the Trans-Atlantic data privacy framework, declining confidence in the ability to ensure the privacy of sensitive data, GoodRx Holdings ordered to pay civil penalties and take corrective action for unauthorized disclosure of personal health information, litigation against

Google for stealing data to train its AI tools, litigation against OpenAI alleging theft of people's data, European Union and United States Data Privacy Framework, Meta's settlement of Cambridge Analytica case, U.S. data privacy law, complying with multiple privacy laws, navigating the complex regulation of privacy and data protection, Privacy Act of 1974, the EU general data protection regulation, implementing a successful data privacy program, data privacy compliance, international data privacy laws, U.S. users opting out of app tracking, how Americans view data privacy, generative artificial intelligence and data privacy, and the urgent need to regulate AI in the United States.

These articles discuss the importance of protecting personal data, but they do not address the Petitioner's proposed endeavor. Working in an important field does not necessarily mean that an individual's work will have national or global implications for the field. The assessment of national importance does not focus on the importance of a field in general, but "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The Petitioner stated he would support privacy litigation, contribute to developing privacy policies and legislation, and conduct privacy research and make publications, but would do so in the context of consulting for public and private entities. Beyond advising individual clients, the Petitioner has not specified how he would impact his field more broadly. *See id.* at 889 (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field). 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 record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his clientele to impact his field more broadly at a level commensurate with national importance.

The Petitioner has not established that his proposed endeavor has national or even global implications within his field or has other broader implications indicating 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.