U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32950514

Date: JULY 29, 2024

Appeal of Nebraska Service Center Decision

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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

The Petitioner described her proposed endeavor as working as a cloud engineer and practitioner for either a private organization or the government. The Petitioner explained she would create, integrate and maintain cloud-based applications, upgrade cloud-based systems to improve operations and protect against data breaches and cybersecurity threats, troubleshoot actual or potential problems, and provide necessary cloud support services.

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 she qualifies for and merits a waiver of the job offer requirement in the national interest.

A. Substantial Merit and National Importance

1. Substantial Merit

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 had not described her proposed endeavor with specificity sufficient to assess its merit. Contrary to the Director's determination, the Petitioner described her proposed endeavor in detail and submitted articles relating to the cloud engineering field and cybersecurity. De novo review of the relevant evidence shows the Petitioner's proposed endeavor has substantial merit.

2. National Importance

The Director concluded the Petitioner did not establish the national importance of her proposed endeavor. 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 her proposed endeavor would have substantial positive economic effects or a broader impact on her field.

On appeal, the Petitioner claims the Director erroneously referred to the Petitioner as a civil engineer, a marketing specialist, and as working in the aviation field. These mistaken references to the Petitioner's occupation and field are hereby withdrawn. The Petitioner also asserts the Director erroneously considered substantial positive economic effects as a requirement to establish national

importance when *Dhanasar* described such effects as non-mandatory. We agree. *See id.* at 890 (stating substantial positive economic effects "may" indicate national importance). This portion of the Director's decision is also withdrawn.

The Petitioner asserts her proposed endeavor has national importance because it has national or even global implications in the field of cloud computing and engineering. Because "cloud computing is a transformative technology with broad-reaching effects in the United States," the Petitioner claims her proposed endeavor will have national implications through the potential for economic growth and job creation of businesses that the Petitioner assists, ensuring or contributing to national security through Amazon Web Services (AWS), and contributions to the national regulatory framework. The Petitioner also claims her proposed endeavor has global implications because cloud computing ensures interconnected economies, ensures international data flow and trade, collaborates with law enforcement and healthcare, and contributes to global data privacy.

The Petitioner submitted articles on cloud computing, cloud engineering, state and federal government use of the Cloud, public sector cloud adoption, benefits of cloud computing, cloud cost optimization, cloud scalability, cloud computing security, cloud compliance standards and security frameworks, cloud storage data residency compliance, cloud adoption linked to stronger firm performance, how the cloud can drive economic growth, Financial Services Institutions migration to Google cloud, AWS, and AWS government contracts. These articles attest to the importance of cloud computing, but do not discuss the Petitioner's proposed endeavor. Our assessment of national importance does not focus on the importance of a field in general, rather it "focuses on the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of her proposed endeavor.

The Petitioner submitted evidence of her technical certifications and recommendation letters which attest to her qualifications and experience, but do not indicate that her proposed endeavor would have national or even global implications in her field. The Petitioner submitted evidence of her certification in AWS DevOps and certified security, Microsoft DevOps and Azure Administrator, and HashiCorp Terraform Associate, but did not submit evidence that her work would develop or otherwise significantly contribute to these systems in a manner with national or global implications for her field. Support letters also commend the Petitioner's skills and accomplishments, but do not evidence any national or global implications. D-M-[2] praised the Petitioner's knowledge and use of DevOps skills at [redacted] P-K-R- praised the Petitioner's "extensive grasp of diverse DevOps tools and Methodologies," her implementation of "a robust CI/CD pipeline" and "a monitoring dashboard utilizing the ELK stack." O-M- described the Petitioner as "an exceptional professional poised to make substantial contributions in the cloud engineering field." D-M-, P-K-R- and O-M- did not indicate that the Petitioner's work had extended or would extend beyond her employment for individual employers to have national or even global implications in her field. *See id.* (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

The Petitioner also claims her proposed endeavor has national importance because it will broadly enhance societal welfare as cloud computing plays a vital role in healthcare. The Petitioner submitted

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

articles on coverage of Health Insurance Portability and Accountability Act (HIPAA) rules, penalties for HIPPAA violations, the Health Information Trust Alliance Common Security Framework, cross-border health data flows, and the Health Information Technology for Economic and Clinical Health (HITECH) Act. The Petitioner did not specify, however, how her work would extend beyond her individual employer(s) to impact the healthcare industry. *See id.* (explaining "we look for broader implications").

The Petitioner further asserts her proposed endeavor impacts a matter that a government entity has described as having national importance or is the subject of national initiatives. The Petitioner submitted articles on National Institute of Standards and Technology (NIST) compliance, Executive Order 14028 (Improving the Nation's Cybersecurity), the Biden-Harris Administration's National Cybersecurity Strategy, Executive Order on Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities, and the Department of Homeland Security's Cyber Safety Review Board's review of cloud security. These articles reflect the national importance of cyber security, but do not address the Petitioner's proposed endeavor. Again, our 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.* Here, none of the articles mention the Petitioner, or otherwise address the potential prospective impact of her proposed endeavor.

The Petitioner also claims the Director erroneously determined her proposed endeavor does not have national importance because it would not extend beyond her work for a specific employer to have broader implications for her field. The Petitioner claims the benefits of her proposed endeavor extend both to her prospective employer and the field of cloud computing. For example, the Petitioner explains that her work would help a potential employer build efficient and secure cloud infrastructure, and comply with cloud computing laws and guidelines, while also helping to safeguard Americans' personal data.

The Petitioner submitted letters from employers and colleagues attesting to her past achievements and expressing confidence in her ability to succeed in future positions. For example, J-W- praised the Petitioner's work for [redacted] and expressed his belief that her "area of profession has potential for contributing to economic growth, protecting critical infrastructure, supporting technological innovation, and strengthening the United States' position in the global IT industry space." Y-T- praised the Petitioner's skills and qualifications and described her as "an invaluable asset to the cloud engineering community" who "has a lot to contribute to the system" and "a lot of businesses will benefit from her expertise." J-W- and Y-T- did not specify how the Petitioner would make such contributions beyond her work for an individual employer to impact her field more broadly. *Cf. id.* at 892 (stating Dhanasar submitted probative expert letters describing the importance of his specific research as it relates to U.S. strategic interests).

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 her prospective employer to impact her field more broadly at a level commensurate with national importance.

C. The Remaining *Dhanasar* Prongs

The Petitioner has not established the national importance of her specific proposed endeavor and she 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 her 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 her proposed endeavor and does not meet the first prong of the *Dhanasar* analytical framework. Consequently, she has not demonstrated that she 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.