U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31494732

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 that the record did not establish the Petitioner's eligibility for EB-2 immigrant classification or the requested national interest waiver. 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 petitioner 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. Section 203(b)(2)(B)(i) of the Act. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

Once 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 a 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.

II. ANALYSIS

On appeal, the Petitioner continues to assert his eligibility for the requested EB-2 immigrant classification as an advanced degree professional by virtue of his foreign education and post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). Upon de novo review, we conclude the Petitioner is not eligible for a national interest waiver under the *Dhanasar* framework, and we will therefore decline to reach and hereby reserve the issue of his eligibility for EB-2 immigrant classification.[2]

The first *Dhanasar* prong, substantial merit and national importance, 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In the initial filing, the Petitioner asserted his intention to continue working in the United States in the software development field stating that his "work experience, personal qualities, and education are of great value to the United States." Specifically, the Petitioner planned to "work as an independent contractor as a [s]oftware [e]ngineer in [t]est, a developer of back-end applications," and planned to "work in different companies, learn more about [his] field, and become the best of the best, to bring the maximum benefit to society and the world with [his] developments." In support of his endeavor, the Petitioner submitted a personal statement, various industry articles and reports providing general background information on the software development field, software testing positions, the shortage of software developers, as well as the importance of software development in business growth. Additionally, the Petitioner submitted several recommendation letters from former colleagues commending his skills in programming, software development, and testing.

In response to the Director's request for evidence (RFE) requesting additional information and evidence to establish the substantial merit and national importance of his endeavor, the Petitioner submitted a new personal statement asserting that, as a software developer engineer in test, he has "a unique opportunity to contribute to the security and quality of product development." He further noted that in his current position he "not only designed the testing environment but also fully automated it,

[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 to be discretionary in nature).

[2] Where a case warrants a dismissal regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)).

significantly enhancing testing efficiency." The Petitioner claimed that his "primary career goal is to continue developing in the IT field in the United States and applying [his] skills and knowledge to address current societal and national issues," as he "believes that IT technologies can bring tremendous benefits to humanity and society as a whole, and [he aspires] to contribute to this process." Ultimately, the Petitioner asserted that his "skills and experience [could] make a positive contribution to the development of technologies that benefit humanity and society as a whole," and his continued employment in the United States would have "significant potential to improve national security, strengthen U.S. companies [by] contributing to their growth and profits, and help fill the shortage of software development professionals." In response to the Director's RFE, the Petitioner also supplemented the record with an expert opinion letter and additional research articles addressing the importance of information technology in various industries, including in delivering health care in the United States.

The Director concluded that the record did not establish the substantial merit or national importance of the proposed endeavor as the Petitioner did not provide a detailed description of his specific proposed endeavor, nor did he provide evidence to establish the endeavor's substantial merit or national importance. Regarding the national importance of the proposed endeavor, the Director noted that the record did not contain evidence to establish that the Petitioner's endeavor would result in broader implications to the industry commensurate with national importance, nor did it show that the endeavor had significant potential to employ U.S. workers or otherwise result in substantial economic benefits contemplated in *Dhanasar*.

On appeal, the Petitioner generally asserts that the Director erred by not properly considering the evidence in the record. In particular, the Petitioner contends that the evidence establishes that his endeavor would lead to broader implications within his field, reduce the shortage of software engineers, impact a matter that the U.S. government has described as having national importance, and result in substantial positive economic benefits.

Upon de novo review, we disagree with the Director's conclusion regarding the substantial merit of the Petitioner's endeavor and withdraw this determination. The record contains sufficient documentation, including industry reports establishing the importance of the software development and testing field as well as the impact of software development to both business operations and medical advances. As such, we conclude that the record supports the substantial merit of the Petitioner's proposed endeavor. However, while the Petitioner has established that the proposed endeavor has substantial merit, the record does not demonstrate its national importance.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Dhanasar* at 889. We therefore "look for broader implications" of the proposed endeavor, noting 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

On appeal, the Petitioner asserts that the record contains "comprehensive evidence" that the Petitioner's proposed endeavor would result in national or even global implications. Yet, the Petitioner does not provide sufficient support for these assertions. For example, the Petitioner broadly asserts that his work in quality assurance "contribute[s] to the overall safety, security and reliability of software used worldwide," but he does not elaborate on how his work would lead to broader implications to the field, beyond development of his prospective employer's software. Likewise, while the Petitioner emphasizes his knowledge and experience in the areas of cybersecurity, global collaboration, and regulatory compliance, he does not elaborate on how this knowledge will result in broader implications to his field, beyond equipping him with the necessary knowledge to perform the duties of a software developer engineer in test. In *Dhanasar* we discussed how teaching would not impact the field of education broadly in a manner which rises to national importance. *Dhanasar* at 893. By extension activities which only benefit the Petitioner's prospective employers, as is the case here, do not rise to a level of national importance.

On appeal the Petitioner also relies on the claimed the shortage of software engineers to assert the national importance of his endeavor and we acknowledge the articles on record discussing the growing demand for software engineers and developers, and the inability for the industry to meet this demand. However, this misapplies the *Dhanasar* framework, as a shortage of qualified professionals alone does not render the work of an individual software developer nationally important. , but under the *Dhanasar* precedent decision. Moreover, the Petitioner has not provided evidence that his proposed endeavor would ameliorate the asserted shortage of software developers. Several of the Petitioner's claims of national importance could reasonably apply to any software developer, but Congress did not provide a blanket exemption for software developers with respect to the job offer and labor certification requirement.[3] Foreign IT professionals, including software developers and software developer engineers in test, are typically subject to this requirement and therefore the standard intrinsic benefit derived from the work of a single software developer is not presumptive grounds for waiving that requirement.

Moreover, the Petitioner also asserts that his work as a software developer in test is of national importance because it impacts a field that a United States government entity has determined is of national importance, however, we disagree. On appeal, the Petitioner states that the evidence of "multiple government initiatives relating to [his] proposed endeavor" establishes that his endeavor is nationally important, however this again misapplies the *Dhanasar* framework. First, while we recognize the evidence on record reflects U.S. government interest in technological advancements, and technological competitiveness, the Petitioner did not sufficiently explain and support with evidence how his proposed endeavor would have a national impact on these broad government initiatives. Rather, he relies on the importance of the software development industry in general to support his assertions. Yet, when evaluating the national importance of a proposed endeavor, the industry or customer base a petitioner will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889.

[3] The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other favorable factors relates to the balancing analysis set forth under the third prong of the *Dhanasar* analytical framework.

In addition, while we have reviewed the expert opinion letter as well as the letters of recommendation contained in the record, we conclude that they do not establish the national importance of the Petitioner's proposed endeavor, as they are primarily limited to discussing his past accomplishments, and do not establish the potential prospective impact of his proposed endeavor. While we recognize that the Petitioner has contributed to the development of software for his former employers, a petitioner'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.

Finally, we agree with the Director that the Petitioner has not demonstrated that his intended employment as a software developer engineer in test has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While the Petitioner asserts on appeal that his endeavor would have substantial positive economic effects, he does not provide sufficient evidence to substantiate these assertions, and instead continues to rely on the potential economic benefits of the software development field in general. Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022). Without sufficient information or evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the pharmacy industry), the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

For the reasons discussed, the Petitioner has not demonstrated that his proposed endeavor would be of national importance, and he therefore does not meet the requirements of the first prong of the *Dhanasar* analytical framework.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he 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 the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs as well as a determination as to whether the Petitioner has met the requirements of EB-2 classification. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.