U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31032051

Date: JUN. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an automation and cybersecurity manager, 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 Petitioner did not establish that he was eligible for the requested classification or that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. 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 eligibility for the EB-2 visa classification is established, 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:

- 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

The Director determined that the Petitioner is a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he is a highly accomplished cybersecurity engineer with 22 years of experience in information security. He currently serves as the chief of cybersecurity for the [redacted] He states that he has also served in academia, teaching and lecturing on computer and cybersecurity. He states that his proposed endeavor is to support public and private companies in various industries as a consultant to promote their development in cybersecurity and information protection.

With the initial filing the Petitioner submitted evidence of his education and experience, a resume, a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver, and recommendation and support letters. He also submitted industry reports and articles discussing the importance of and increasing demand for cybersecurity in the United States.

Following initial review, the Director determined that the Petitioner had established that his proposed endeavor has substantial merit and national importance and that he had met the first of the factors under *Matter of Dhanasar*, 26 I&N Dec. 884. However, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver under the remaining *Dhanasar* prongs. The Petitioner's response to the RFE includes an additional recommendation letter expressing interest in working with the Petitioner on his proposed endeavor.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had not submitted sufficient evidence to demonstrate that he is well-positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Director stated that the record did not sufficiently demonstrate "what the Petitioner intends or proposes to do as an automation and cybersecurity consultant." The Director noted that the recommendation letters do not discuss or demonstrate knowledge of the Petitioner's specific proposed

[1] *See also 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] The record demonstrates that the Petitioner holds the foreign equivalent of a U.S. master's degree in business administration awarded in 2011. *See* 8 C.F.R. § 204.5(k)(3)(i).

endeavor. The Director concluded that the Petitioner had not established "that he has influenced the field beyond the normal expectations of a cybersecurity and automation consultant" or otherwise described his contributions to the field of cybersecurity. Additionally, the Director determined that the Petitioner did not establish that his contributions were of such value that, on balance, they would benefit the United States even if other qualified U.S. workers are available.

On appeal, the Petitioner submits a brief and asserts that the Director ignored evidence, conducted a partial analysis, and did not "provide a thorough assessment of the evidence of record across all filings." The Petitioner states on appeal that, in not discussing the totality of the evidence submitted, the Director's decision "is flawed amounting to an abuse of discretion." In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates by a preponderance of the evidence that he merits a national interest waiver.

The Petitioner asserts that the Director abused her discretion in failing to address all evidence, citing *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994) in support. The court in *Buletini*, however, did not reject the concept of examining the quality of the evidence presented to determine whether it establishes a petitioner's eligibility, nor does the *Buletini* decision suggest that USCIS abuses its discretion if it does not provide individualized analysis for each piece of evidence. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude that the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

The Petitioner also asserts that the Director imposed "novel or undefined and arbitrary requirements" that are not required for eligibility for a national interest waiver. Specifically, the Petitioner states that the Director erred in requiring that he demonstrate contributions to the field "beyond adding to the general pool of knowledge," or that he has "influenced the field beyond the normal expectations of a cybersecurity and automation consultant." We disagree. While the Director notes these deficiencies in the Petitioner's evidence, the decision does not indicate that the Director based her decision solely on these deficiencies or imposed arbitrary requirements. Rather, as noted above, the record reflects the Director's consideration of all evidence in the totality.

In determining whether a petitioner is well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. 884, at 890.

To support his claimed record of success in the field, the Petitioner relies on letters of recommendation from his former colleagues. However, the letters do not provide specific examples indicating that the Petitioner's work has impacted the field of cybersecurity or led to the creation of an information

security policy or change in existing policy or practice.[3] For example, a letter from the Corporate Manager of Risk with [redacted] lists the Petitioner's job duties with the company as business information security officer. Although the letter states that the Petitioner was successful in this position and benefitted the company, it does not describe any specific achievements that had a broad impact in the field of cybersecurity. Nor does it provide examples of how the Petitioner is well-positioned to advance his proposed endeavor. Similarly, a letter from the Chief Risk Officer of [redacted] lists the Petitioner's job duties with the company as chief information security officer and states that he was successful in this role. While the letter states that the company "increased its creditworthiness to its customers and minded the possibility of governmental penalties," it does not explain in detail why this achievement was significant. Other letters in the record also attest to the Petitioner's successful performance of his job duties, but do not include details of his achievements that impacted the field of cybersecurity or examples of how he is well-positioned to advance his proposed endeavor. Additionally, the recommendation letters do not analyze the Petitioner's proposed endeavor or offer evidence of its impact.

The Petitioner contends that the Director ignored evidence, such as the Petitioner's academic credentials and personal statement. However, the Director's decision referenced the Petitioner's education and experience and explained why she found such evidence to be insufficient to establish eligibility. As such, we do not find support for the Petitioner's contention.

In his personal statement, the Petitioner describes his record of success throughout his career. He states that he has participated in "creation of policies, procedures and response plan for relevant incidents and cyber intelligence reducing technological risk of [the] company." However, the Petitioner did not submit evidence to explain the significance of these achievements. The record does not include evidence demonstrating that the Petitioner's work has influenced the field of cybersecurity. Nor does the record include a detailed business plan or other description of how the Petitioner plans to advance his proposed endeavor. The Petitioner's personal statement contains a general assertion that his proposed endeavor "can be very important for both public and private companies, especially in small communities in the USA," but he provides little to no information on how his endeavor will operate. The Petitioner's assertions, without evidence to substantiate them, do not establish his eligibility.

The record demonstrates that the Petitioner has an academic background and successful professional career working in cybersecurity, but he has not shown that this work renders him well-positioned to advance his specific proposed endeavor as an automation and cybersecurity manager. We examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed endeavor, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Matter of Dhanasar*, 26 I&N Dec. 884, at 890. The Petitioner, however, has not sufficiently demonstrated that his work has served as an impetus for progress in the development or change of cybersecurity policy.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the importance of cybersecurity generally. However, as set forth above, the evidence does not sufficiently demonstrate that he is well-positioned to advance

[3] While we discuss a sampling of these letters, we have reviewed and considered each one.

his proposed endeavor. Therefore, we conclude that the Petitioner has not met the requisite second prong of the *Dhanasar* framework.

As the record is insufficient to demonstrate that the Petitioner is well-positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. As such, analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[4] Accordingly, the Petitioner has not shown eligibility for a national interest waiver.

III. CONCLUSION

As the Petitioner has not met all of the requisite three prongs set forth in 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.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).