U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30188420

Date: MAR. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a cybersecurity specialist and educator, seeks classification as a member of the professions holding an advanced degree. 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 EB-2 immigrant classification. Section 203(b)(2)(B)(i) of the Act. 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree[1] but that he had not established that a waiver of the required job offer, and thus 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 because the Petitioner did not establish that his proposed endeavor has

[1] We note that it is unclear if the Petitioner qualifies for EB-2 classification based on an advanced degree. *See* 8 C.F.R. § 204.5(k)(2). The Petitioner submitted copies of his Costa Rican degrees: a "Maestría Profesional" in Information Technology Engineering from the [redacted] and a "Bacherillerato en Inguenieria Informatica" in Computer Engineering from the [redacted]. According to the American Association of Collegiate Registrars and Admission Officers' (AACRAO) Electronic Database for Global Education (EDGE), a "maestria" degree from Costa Rica is equivalent to a U.S. master's degree. However, the Petitioner's degree is a "Maestría Profesional" and ACCRAO EDGE does not indicate if a professional master's degree is likewise equivalent to a U.S. master's degree. Further, ACCRAO EDGE indicates that a "bachillerato" is not the equivalent of a U.S. bachelor's degree. Rather, the Costa Rican equivalent to the U.S. bachelor's degree is the "bachiller universitario." From the information submitted, it is not clear that the Petitioner's bachillerato would equate to a bachelor's degree. We note that the Petitioner submitted an evaluation report from the Foundation for International Services, Inc. That report suggests that the Petitioner's "bachillerato" is equivalent to a U.S. bachelor's degree, however, it appears to conflict with the information in EDGE and should be resolved in any further filings. As the appeal is dismissed on other grounds, we need not reach, and therefore reserve, the issue of whether Petitioner is eligible for the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

national importance under the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

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. Next, a petitioner 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. at 889, provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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 first prong of the *Dhanasar* test – substantial merit and national importance – focuses on the specific endeavor the Petitioner proposes to undertake. *Id.* at 889. The Petitioner's proposed endeavor was to work as a cybersecurity specialist, educator and consultant. The Petitioner initially stated that he "propose[d] the application of my training, knowledge, and expertise as a cybersecurity expert to design and developing [sic] security strategies to improve the cybersecurity posture of companies in the USA in any of the 8 domains that are proposed by the International Information System Security Certification Consortium." Those domains were "Security and Risk Management, Asset Security, Identity and Access Management (IAM), Security Assessment and Testing, Security Operations, and Software Development Security." Following initial review, the Director issued a request for evidence (RFE) asking the Petitioner to submit additional evidence that demonstrated that the Petitioner's proposed endeavor satisfied the national importance requirement under *Dhanasar's* first prong. Further, the Director requested that the Petitioner provide additional evidence that indicated that he was well-positioned to advance his proposed endeavor under *Dhanasar's* second prong. Finally, the Director requested evidence establishing 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.

In response to the Director's RFE, the Petitioner reiterated his initial explanation of his proposed endeavor. The Petitioner also submitted an updated statement, letters of recommendation, and articles discussing the costs associated with cybersecurity threats, the shortage of cybersecurity professionals, and U.S. government initiatives. The government initiatives referenced are not specific to the Petitioner and involve cybersecurity themes generally (e.g., the National Institute of Standards and

[2] *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).

Technology's Cybersecurity Framework and the Cybersecurity and Infrastructure Security Agency's recognition of the importance of cybersecurity in safeguarding national security generally).

The Director concluded that while this proposed endeavor had substantial merit, the Petitioner had not established that: (1) it would be nationally important, (2) that he was well positioned to advance the endeavor, or (3) that on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification. Specifically, the Director determined that the Petitioner had not provided sufficient evidence to determine how he planned to effectuate his proposed endeavor. Further, the Petitioner had not elaborated on whether he would, if granted a national interest waiver, continue to work for his current employer or pursue self-employment which would be relevant to the determination of the prospective economic impact of his proposed endeavor. Additionally, the Director concluded that while the Petitioner demonstrated a topical correlation between his proposed endeavor and critical issues involving cybersecurity, the Petitioner provided insufficient evidence that explained his specific proposed endeavor and how it would have an impact so substantial as to rise to the level of national importance. The evidence in the record does not support the conclusion that the proposed endeavor will extend beyond an organization, the Petitioner's employer, and its clients to impact the field of cybersecurity generally.

On appeal, the Petitioner submits a legal brief, recommendation letters, and educational certificates. The Petitioner's legal brief asserts that the Director's decision provided "no basis" to call into question the evidence submitted. Upon inspection of the entire record, we conclude that the Director properly reviewed the evidence provided and analyzed the Petitioner's claims using the preponderance of the evidence standard.[3] The Petitioner has not met his burden of proof and provided relevant, probative, and credible evidence establishing the national importance of his proposed endeavor. *Matter of Chawathe*, 25 I&N Dec. 369, 376.[4]

For instance, the Petitioner relies on the importance of the cybersecurity field generally and the shortage of cybersecurity experts as evidence of the national importance of his endeavor both on appeal and in his previous submissions. However, as the Director explained, the importance of an endeavor is determined not by the industry or occupation it involves, but by the Petitioner's specific proposed endeavor's prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. An endeavor may qualify if it has national implications within a particular field or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* The Director also specifically noted in her decision that the Petitioner's proposed endeavor provided insufficient details of his plans to continue his work and his means to accomplish his proposed endeavor. The Petitioner has not submitted a business plan to illustrate in detail his proposed endeavor. Although the Petitioner submitted a number of letters in support from various people in the cybersecurity field, the Director noted that the letters "do not meaningfully discuss the Petitioner's proposed endeavor" in order to establish how it might meet the standard of national importance.

[3] Because we deny the Petitioner's appeal based on the first prong of *Dhanasar*, we decline to reach and hereby reserve the Petitioner's remaining arguments on appeal.

[4] Although we do not address each and every document submitted by the Petitioner, we have reviewed the record in its entirety.

The Petitioner's brief on appeal also puts forth a substantially different endeavor which is "to establish his own cybersecurity consultancy...and also provide training to US employees to help fill the void in the job sector of his profession." While elements of his proposed endeavor are the same as initially claimed, the proposed endeavor put forward on appeal states that the Petitioner will "create an operate his own cybersecurity company." The Petitioner has provided no evidence of the creation of a company nor evidence of where such a company would be established. In the Petitioner's RFE response, he does not mention either being a consultant or an educator. Instead, he focused solely on being a "cybersecurity expert." Because the Petitioner was put on notice when the Director issued a request for evidence and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b) (11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Additionally, the substantially different concept put forward on appeal lacks sufficient detail to properly analyze such a claim even if we could consider it.

Based on the evidence of record, the Petitioner's proposed endeavor of being a cybersecurity specialist, educator, and consultant is too amorphous to meet his burden of proof. The Director specifically noted the lack of detail in the Petitioner's proposed endeavor in her decision, but the Petitioner has not submitted anything on appeal to overcome that deficiency, and additionally proposed a substantially different endeavor. While the burden of proof is the preponderance of the evidence standard, the burden is on the Petitioner alone to provide material, relevant, and probative evidence to meet the requirements of the benefit they seek. Section 291 of the Act, 8 U.S.C. § 1361. A petitioner's burden of proof comprises both the initial burden of production as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

The totality of the evidence submitted by the Petitioner does not support the conclusion that his specific proposed endeavor will have broader implications within the cybersecurity field. Nor does the evidence submitted demonstrate that the proposed endeavor has significant potential to employ U.S. workers or have substantial positive economic benefits (particularly in an economically depressed area).

III. CONCLUSION

The Petitioner has not submitted sufficient evidence to establish that his proposed endeavor will extend beyond an organization and its clients to impact the field of cybersecurity. In *Dhanasar*, we found that the petitioner's teaching activities were not sufficiently substantive in scope to meet the national importance aspect of prong one. *Matter of Dhanasar,* 26 I&N Dec. at 893. Similarly, the Petitioner's proposed endeavor has not been substantiated with sufficient evidence to demonstrate that its impact would be at the level of national importance. In determining national importance, the relevant question is not the importance of the industry in which the individual will work. Rather, the relevant question when assessing an endeavor's importance is the impact that will be specifically attributable to it.

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver as a matter of discretion.[5] As the identified basis of denial is dispositive of the Petitioner's appeal, we need not address the Petitioner's eligibility under second or third prongs of *Dhanasar* and hereby reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 did not otherwise meet their burden of proof).

The Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.

[5] *See Brasil v. Sec'y of DHS*, 28 F.4th 1189, 1194 (11th Cir. 2022) (per curiam) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).