U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36222829

Date: MAR. 10, 2025

Appeal of Nebraska 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 on behalf of the Beneficiary as an advanced degree professional, 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 that although the Beneficiary is an advanced degree professional, the Petitioner did not establish 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate the beneficiary's 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. Once a petitioner demonstrates the beneficiary's eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." *Id.*

Matter of Dhanasar, 26 I&N Dec. 884 (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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals 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. at 889.

II. ANALYSIS

The Director denied the petition, concluding that although the Beneficiary is eligible for EB-2 classification as an advanced degree professional, the Petitioner did not establish that a waiver of the job offer, and labor certification requirement, is in the national interest because they did not establish eligibility under any of the *Dhanasar* prongs. On appeal, the Petitioner contests the Director's determination and asserts eligibility under all three of the *Dhanasar* prongs.

Upon de novo review, we agree with the Director's determination that the Beneficiary qualifies for classification as a member of the professions holding an advanced degree. As such, the only remaining issue is whether the Petitioner has established eligibility for a discretionary waiver of the labor certification and job offer requirement under the *Dhanasar* framework.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.*

The Petitioner states that the proposed endeavor is for the Beneficiary to work for the Petitioner in the position of senior site reliability engineer. In this position, the Beneficiary will use cloud computing, computing architectures, supercomputing, data analysis, and data processing to design, develop, and implement cloud-based architecture that will allow the Petitioner's gaming and streaming services to be accessed securely and reliably from anywhere, on demand. The Petitioner asserts that the Beneficiary's job duties will facilitate a reliable and secure user experience for millions of [redacted] users across diverse geographic locations, which will lead to substantial revenue and advance critical U.S. governmental interests by enhancing U.S. capabilities in critical and emerging technologies (CET). The Director concluded the proposed endeavor is of substantial merit under the *Dhanasar* framework. We agree.

In concluding that the Petitioner did not establish the proposed endeavor is of national importance, the Director determined that the Petitioner had not shown that the impact of the proposed endeavor would "sufficiently extend beyond [the Petitioner] such that it would impact his field more broadly," and that the record did not demonstrate that the Beneficiary's work will impact U.S. interests or the industry more broadly at a level commensurate with national importance. The Director considered the industry

reports, articles, and documents discussing artificial intelligence, national security, research, and technology; however, the Director determined that although these documents establish the significance of these fields and the endeavor's substantial merit, the information did not address the Beneficiary's contributions to the field or industry in which he will work at a level commensurate with national importance. The Director considered the fact that the proposed endeavor relates to STEM or CET, which are fields determined by the U.S. government to be of priority status. However, the Director explained that simply because the proposed endeavor is in a STEM or CET field, does not, on its own, establish an endeavor's national importance. The Director considered the Petitioner's assertion that there is a shortage of U.S. workers but pointed out that the U.S. Department of Labor's regulations implementing the labor certification and job offer process, already addresses labor shortages, and thus a labor shortage is not relevant to *Dhanasar's* prong one analysis. Finally, the Director considered the expert letter provided by a professor at [redacted] but found that it did not support the national importance of the proposed endeavor because the professor's letter focused on the importance of the Petitioner, but not the Beneficiary's proposed endeavor.

On appeal, the Petitioner asserts that the Director misapplied the standard used in a national interest waiver petition, and disregarded "key probative evidence." As it relates to prong one of the *Dhanasar* national interest waiver framework, the Petitioner asserts the disregarded evidence includes "substantial information" demonstrating the "impact of the beneficiary's endeavor on critical U.S. economic and technological interests [which] very clearly shows how the beneficiary's endeavor does extend nationally and will serve interests beyond the petitioner's specific interests." The Petitioner highlights the evidence submitted to establish that the U.S. government has an interest in developing cloud-based architecture critical to facilitating the availability of cloud-based gaming and streaming products. In addition, the Petitioner asserts the proposed endeavor is nationally important because of the U.S. interest in "attracting and retaining STEM workers, which is critically important given the shortage of qualified workers in these fields." The Petitioner contends that the Beneficiary's work extends beyond its customers to the American public "by leveraging these technologies to ensure the security and reliability of cloud-based architecture critical to facilitating the availability of cloud-based gaming and streaming products." The Petitioner also explains that the market value of the global gaming market is $217.06 billion, and the Beneficiary's job duties will lead to the Petitioner's further dominance in the industry, and substantial revenue for the U.S. economy. The Petitioner asserts the impact of the Beneficiary's job duties includes social cohesion and welfare in the United States because gaming industry users come from diverse backgrounds, ages, and geographic locations, and that their secure access to gaming products and services is important to ensure social cohesion and welfare. In terms of the Beneficiary's impact on the industry more broadly, the Petitioner asserts that any cloud-based platform and services could potentially be impacted by his work. Finally, the Petitioner contends that because the Director concluded the Beneficiary's field is important and that the Petitioner is important, taken together with the other evidence provided, the proposed endeavor is of national importance, by a preponderance of the evidence.

Preponderance of the evidence means that the Petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence.

Id. Upon de novo review of the record, we agree that the Petitioner has not established national importance as contemplated under the *Dhanasar* framework by a preponderance of the evidence.[2]

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." *Matter of Dhanasar*, 26 I&N Dec. 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.* Thus, the issue is not whether cloud infrastructure or the digital entertainment industry, as a whole, is nationally important. Rather, the Petitioner must demonstrate the national importance of the specific, proposed endeavor of the Beneficiary's work as a senior site reliability engineer.

We acknowledge the Petitioner's evidence explaining the general value of the field within which the Beneficiary works, however this evidence does not sufficiently demonstrate how the Beneficiary's employment with the Petitioner would lead to CET in the digital entertainment industry or in cloud infrastructure or how his employment would have a broader impact on these fields, at a national level commensurate with *Dhanasar*. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To begin, as the Director noted, the Petitioner's claim that the proposed endeavor has national importance due to the shortage of professionals in the industry is not persuasive because there is no indication that the proposed endeavor stands to impact or significantly reduce the claimed national shortage. *Id.* Further, as the Director noted, the shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. *Id.*

As noted above, we recognize the substantial merit of the proposed endeavor; however, contrary to the Petitioner's assertion, merely working in an important field or for a prominent employer does not necessarily establish the national importance of the proposed endeavor. In *Dhanasar*, we highlighted that while the field of STEM education may be of national importance, the duties of a STEM teacher in a classroom would not necessarily be of national importance because the impact that would flow from the teacher's activities would not sufficiently extend beyond the students sitting in their classroom. *Matter of Dhanasar*, 26 I&N Dec. at 893 (stating "[w]hile STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly.") Likewise, here, the record does not establish that the Beneficiary's duties as a senior site reliability engineer would impact the digital entertainment industry more broadly, beyond the Petitioner's customers. *Id.*

The Petitioner submitted two expert opinion letters from a professor at [redacted], asserting that the Beneficiary's proposed endeavor is of national importance and explaining how the Petitioner's products and industry impact the economy. The first letter does not mention the Beneficiary at all and refers generally to the position of software engineer within the Petitioner but not the proposed endeavor of "senior site reliability engineer." This letter focuses on the Petitioner's prominence in the

[2] We acknowledge that the Director erroneously identified the Petitioner as a future employer instead of a current one and misstated the field of endeavor in one instance. However, these errors are harmless and do not alter the ultimate outcome of the appeal. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021). This is because the Director properly analyzed the evidence with respect to whether the proposed endeavor is of national importance.

gaming industry, and the general interest the U.S. has in artificial intelligence and cybersecurity. As it relates to prong one of the *Dhanasar* framework, this letter explains that it is the Petitioner's operations, and its impact on the gaming industry and the national economy, that are of national importance. In response to the Director's request for evidence, the Petitioner submitted a second letter, which discusses the Petitioner's prominence, and the general importance of the industries involved. This letter also discusses the general duties of a senior site reliability engineer. Both letters opine that because the Petitioner's products have a global reach through its gaming systems as well as its large revenues and that because the gaming industry as a whole is subject to cyberattacks which "threaten sensitive personal and financial information to millions of gamers," the proposed endeavor is of national importance. The letters also generally describe the impact that the software sector, cybersecurity, and gaming have on the U.S. economy. However, the letters do not sufficiently detail how the Beneficiary's work for the Petitioner would have a broader impact on the Petitioner's revenue and the industries cited. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For instance, the first expert letter discusses the general duties of a software engineer as "focusing on testing, QA, data infrastructure, and/or security, as well as . . . AI," but the writer does not sufficiently describe the solutions and innovations or the Beneficiary's specific position. *Id.* The second letter similarly does not explain how the position of senior site reliability engineer would have a broader impact on the company's revenue, and in turn, the global or national economy. *Id.* In general, the letter's assertions regarding the national importance of the proposed endeavor relate back to the Petitioner's prominence within the gaming industry or the importance of the industry as a whole. *Id.* Without a more comprehensive understanding of how the Beneficiary's work would specifically contribute to the Petitioner's prospective economic vitality or growth, it is unclear how the proposed endeavor would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In addition, the Petitioner did not demonstrate how the Beneficiary's position as a senior site reliability engineer would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The Petitioner asserts that its standing within the digital entertainment industry and its high levels of revenue establish the proposed endeavor's national importance. However, the Petitioner did not sufficiently explain or demonstrate how the Beneficiary's employment alone would have any projected economic impact or create jobs, at a level of national importance. *Id.* For instance, the Petitioner asserts on appeal that the Beneficiary's contributions could lead to the implementation of similar advanced computing and data security solutions within e-commerce frameworks, which can be applied across various industries outside the gaming industry, thereby stimulating demand for skilled labor such as engineers, developers, security experts, and other technological professionals. However, the Petitioner did not sufficiently explain how the proposed endeavor would extend beyond the gaming field or lead to the substantial hiring of other STEM or CET professionals. *Id.*

Because the proposed endeavor is STEM based, we evaluated the proposed endeavor under our STEM guidance which recognizes the importance of progress in STEM fields and the essential role of individuals "with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security." 6 *USCIS Policy Manual* F.5(D). However, because the evidence in this case mainly focuses on the importance of the industry and the Petitioner's market prominence, it does not establish that the

Beneficiary's activities as a senior site reliability engineer for the Petitioner have the broad potential to advance STEM technologies. *Id.; and see Matter of Chawathe*, 25 I&N Dec. at 375-76.

Finally, the Petitioner asserts that the Beneficiary's work would have a broader societal impact by contributing to social cohesion due to the diversity of digital entertainment users, and more specifically [redacted] (the Petitioner's marque product) users. Our guidance explains that if the proposed work would "broadly enhance societal welfare . . . or contribute to the advancement of a valuable technology" at nationally important levels, an endeavor may be considered of national importance. *See* 6 *USCIS Policy Manual* F.5(D)(1). However, as noted above, the evidence mainly focuses on the importance of the industry and the Petitioner's market prominence rather than the potential of the proposed endeavor to broadly enhance societal welfare or contribute to the advancement of a valuable technology at nationally important levels. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because the Petitioner has not established eligibility under prong one, we need not reach and therefore reserve the Petitioner's arguments regarding the second and third *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues the decision of which is unnecessary to the ultimate decision).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, they have not established that a discretionary waiver of the job offer is in the national interest.

ORDER: The appeal is dismissed.