U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36319631

Date: MAR. 10, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a manufacturer of electronic products and provider of related businesses and services, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 that although the Beneficiary qualified for classification as a member of the professions holding an advanced degree, the Petitioner had not established 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 the underlying EB-2 visa classification, a petitioner must first establish the beneficiary's qualification for the underlying EB-2 classification as 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 establishes the beneficiary's eligibility for the underlying EB-2 classification, it must then demonstrate 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.

Id.

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree.[2] The next issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest under the *Dhanasar* analytical framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the alien 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The record indicates that the Beneficiary is employed by the Petitioner in the position of Software Developer II. Regarding his proposed endeavor, the Petitioner stated as follows:

> [The Beneficiary's] proposed endeavor focuses on the utilization of Artificial Intelligence (AI) and advanced computing concepts, including advanced cloud services and data processing and analysis techniques to develop data processing platforms for real time marketing on [the Petitioner's] e-commerce platform, which will impact our consumer experience and financial revenue for [the Petitioner's] games and streaming systems and services.

The Petitioner further explained that it "has been at the forefront of developing, expanding, and improving its cloud-based game streaming services and related e-commerce platforms," and further indicated that the expansion of cloud-based services and accompanying e-commerce platforms "has not only generated recurring revenue stream for the business, but also given competitive edge to establish [the Petitioner] as one of the leading providers of a versatile streaming platform that can adapt to new gaming trends and consumer demands." The Petitioner highlighted the fact that "e-commerce platforms serve as the backbone for delivering cloud streaming services in the video game industry" and provide a "seamless interface for users to discover, purchase, and access gaming content," and concluded that by leveraging real-time marketing techniques, it "enhances user experience, increases conversation rates, and maintains a competitive edge in the ever-evolving video game market."

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[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).

[2] The record demonstrates that the Beneficiary holds a U.S. master's degree in computer science from the [redacted]

The Petitioner further described the Beneficiary's proposed endeavor as follows:

> The [Beneficiary's] work in utilizing AI and advanced computing concepts, including advanced cloud services and data processing and analysis techniques to develop data processing platforms for real time marketing on our e-commerce platform is critical for [the Petitioner's] e-commerce platform to thrive in an increasingly competitive landscape and meet the evolving demands of gamers worldwide as it allows for the rapid and accurate analysis of vast amounts of data, including user behavior data, and optimization of marketing strategies in real-time. Specifically, the [Beneficiary's] contributions to [the Petitioner's] data processing capabilities for its streaming and e-commerce platform will enable the company to stay competitive in a rapidly evolving market by providing personalized experiences that resonate with users, leading to increased engagement and customer loyalty. The [Beneficiary] will also utilize AI and advanced computing techniques to develop data analytics infrastructure that analyze user behavior and preferences in real-time, allowing for the optimization of marketing strategies to drive conversations and maximize revenue opportunities. Finally, the [Beneficiary's] proposed endeavor will provide [the Petitioner] with the ability to deliver tailored recommendations and promotions, which enhances user satisfaction, leading to higher retention rates and lifetime customer value.

In addition to its annual report, the Petitioner submitted the Beneficiary's educational credentials, background information on his field of endeavor, recommendation letters from others in the industry, an expert opinion letter, and copies of articles and reports pertaining to AI, critical and emerging technologies (CET), and documentary evidence of undersupplied STEM (Science, Technology, Engineering, or Mathematics) workers in the U.S. labor market in support of the petition.

In response to the Director's request for evidence (RFE) requesting a more detailed description of the proposed endeavor, the Petitioner submitted letters from its counsel and the Beneficiary's direct supervisor which discussed the proposed endeavor in further detail and emphasized that by permitting broader access to the Petitioner's gaming and streaming services, the endeavor would generate significant revenue, advance U.S. governmental interests, and enhance U.S. capabilities in the STEM field and CET. The Petitioner also submitted supplementary background information pertaining to the Beneficiary's field of endeavor as well as additional articles and industry reports.

In denying the petition, the Director determined that although the Beneficiary's proposed endeavor had substantial merit, the Petitioner had not established that the endeavor had national importance. Specifically, the Director determined that the Petitioner had not shown that the Beneficiary's proposed endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States, and further determined that the Petitioner had not shown that the benefits to the national economy resulting from the Beneficiary's proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that it has established, by a preponderance of the evidence, the national importance of the Beneficiary's work, and that the Director's decision was in error because it "applied a more stringent standard of review." The Petitioner further contends that the decision disregarded key probative evidence. With respect to the standard of proof in this matter, a petitioner

must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met this burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon de novo review, we agree with the Director's determination that the articles and industry reports in the record, including multiple government reports discussing the U.S. government's interest in STEM fields and CET, establish the substantial merit of the Beneficiary's proposed endeavor. The evidence of record, however, does not sufficiently demonstrated the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and 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.

The Petitioner asserted that the Beneficiary's proposed endeavor is of national importance because "using AI and advanced computing techniques and technologies to develop novel data processing analytics infrastructure, implemented with an eye towards sustainability, efficiency, scalability, as well as data security and compliance with data privacy regulations, directly contributes to [the Petitioner's] sustained profits and efficiencies in their operations and helps impart buyer excitement and confidence for enhanced gaming experiences." The Petitioner further stated that "the [Beneficiary's] endeavor is quite simply innovative and financially impactful," noting that his work will "directly translate into several billions of dollars in revenue for [the Petitioner] which in turn will positively impact the U.S. economy, afford the United States the ability to compete as a leader in the gaming industry, and maintain its reputation as an enduring household name."[3] The Petitioner relied on the articles and reports discussing the critical nature and importance of advanced computing and government memos referencing advanced computing as a critical technology, noting that the U.S. government has an interest in both developing cloud infrastructure to advance U.S. capabilities in CET and attracting and retaining STEM workers.

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 endeavor's impact would "sufficiently extend beyond [the Petitioner] and its clients." The Director further determined that the record did not demonstrate that the Beneficiary's work would impact software engineering, AI development, computer science, U.S. cultural interests, or the U.S. economy more broadly at a level commensurate with national importance. Although the Director considered the industry reports, articles, and documents discussing AI, national security, research, and technology, the Director determined that

[3] The Petitioner noted that the global game market size is valued at $217.06 billion.

while these documents establish the importance of these fields, and the endeavor's substantial merit, the information did not pertain to the Beneficiary's specific contributions to the field or industry in which he will work at a level commensurate with national importance.

On appeal, the Petitioner contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, it relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.

For example, the Petitioner submitted an expert opinion letter from a professor in the computer science department at [redacted] which provides a detailed history of the Petitioner's organization, its current operations and initiatives, and its influence on the software sector, the gaming industry, cybersecurity, and the U.S. economy. In this letter, the professor generally comments on the work performed by the Petitioner's software engineers, noting that they are experts focusing on testing, quality assurance, data infrastructure and/or security, and AI, and therefore their work is vital to furthering the U.S. national interest. The professor, however, does not specifically discuss the Beneficiary's proposed endeavor, and does not explain how the Beneficiary's individual work performed for the Petitioner impacts the field beyond supporting the functions of the Petitioner. The professor primarily concentrates on how the Petitioner's software engineers collectively can make a significant impact on U.S. technological growth, job creation, cybersecurity, the environment and sustainable technologies, and AI generally, as well as the manner in which they can contribute to advancing the Petitioner's network software development initiatives. The professor focuses on the Petitioner's industry, its collective workforce of software engineers, and the field of software engineering rather than focusing on the Beneficiary's specific endeavor to explain its national importance. *See Dhanasar*, 26 I&N Dec. at 889 (noting that the focus of prong one is not the importance of the field, industry, or profession but the specific endeavor the alien proposes to undertake).

As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the professor's advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Petitioner also submitted letters of recommendation, including one from the Beneficiary's former employer.[4] The author, however, did not discuss the Beneficiary's proposed future endeavor, but instead primarily focused on his past work experience and accomplishments in the technology sector. While we acknowledge that the Beneficiary provided valuable software engineering services to his former employer in the past, the Petitioner has not offered sufficient information and evidence based

[4] While we will not address the contents of each letter individually, we have read and analyzed each one.

on this recommendation letter to demonstrate that the prospective impact of the Beneficiary's proposed endeavor will rise to the level of national importance, rather than only impacting his current employer. Moreover, while the author commends the Beneficiary's background and abilities in the field, this relates to the second prong of the *Dhanasar* test, which concerns whether he is well-positioned to advance his proposed endeavor. It does not relate to that endeavor's national importance. The letter does not demonstrate that the Beneficiary's work will have national or global implications in the field of software engineering.

We acknowledge the Petitioner's submission of articles and industry reports in support of the assertion that the proposed endeavor relates to STEM fields and CET, which the U.S. government considers vital.[5] However, and as noted by the Director, the fact that the proposed endeavor is in a STEM field or pertains to CET does not singularly establish an endeavor's national importance. For example, the Petitioner relies on a report by the National Science and Technology Council on "Critical and Emerging Technologies List Update" submitted to the White House in February 2022. However, the Petitioner does not address how this report demonstrates the national importance of the Beneficiary's proposed endeavor other than that his endeavor is in a STEM field. We recognize the importance of STEM fields and "the essential role of persons with advanced STEM degrees in fostering this process, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security." *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://uscis.gov/policymanual. However, simply pursuing an endeavor in a STEM field does not automatically demonstrate eligibility for a national interest waiver. In this case, the Beneficiary does not intend to advance STEM technologies and research, but rather seeks continued employment as a software engineer for the Petitioner. Here, the Petitioner has not established how the Beneficiary's individual employment with its organization would affect software engineering employment levels or the U.S. economy more broadly consistent with national importance, nor has it established that the Beneficiary's proposed endeavor aims to advance STEM technologies or research and thus have a broad impact in a STEM field to establish its national importance.

For the reasons outlined above, we cannot conclude that the Beneficiary meets the first prong of the *Dhanasar* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under *Dhanasar's* second and third prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 demonstrated that the Beneficiary's proposed endeavor meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, the Petitioner has not established that the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion.

[5] We further note that the Petitioner's counsel relies to these reports and articles throughout the record and emphasizes the Beneficiary's proposed endeavor has national importance due to the fact that his endeavor is relevant to these sectors. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

ORDER: The appeal is dismissed.