U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30242533

Date: MAR. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an aspiring entrepreneur in application/software development, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but did not demonstrate their eligibility for a waiver of the required job offer, and thus of the labor certification, 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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 second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

II. ANALYSIS

The Director concluded that the Petitioner qualified as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a research assistant at [redacted] New York. The Petitioner proposed to endeavor to function as an entrepreneurial software developer with an intention to "design an application that achieves human brain and computer symbiosis." The Petitioner's "web application to facilitate online search" would "provide visually engaging and interactive search results." An example of this is the Petitioner's development of [redacted] a software application which interactively searches and displays information from GitHub. GitHub is an open-based, free to use code hosting platform for version control and collaboration owned by the Microsoft Corporation.

For the reasons discussed below, we conclude the Petitioner's substantially meritorious proposed endeavor does not rise to a level of nationally importance. So we conclude that the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. As stated above, the endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, sciences, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

1. Substantial Merit

The Director concluded the Petitioner's proposed endeavor was not substantially meritorious because their education in biology and neuroscience did not relate to the software development field of endeavor. But we evaluate an individual petitioner's credentials when we evaluate a petitioner's eligibility under the second prong of the *Dhanasar* analytical framework. An endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Dhanasar* at 889. The Petitioner described their endeavor as an "entrepreneur" who sought to "design an application that achieves human brain and computer symbiosis." The record before us contains evidence of the characterization of the Petitioner's proposed endeavor as an "entrepreneur" which falls within the range of areas we concluded could demonstrate endeavor of substantial merit. So, we conclude the record supports the substantial merit of the Petitioner's proposed endeavor and withdraw the Director's conclusion to the contrary.

2. National Importance

The Director concluded the Petitioner's endeavor was not nationally important because their education in biology and neuroscience did not relate to the software development field of endeavor. But the first prong of the *Dhanasar* analytical framework focuses on the proposed endeavor. So, attributes such as the education of the individual petitioner are not relevant to an examination of whether a proposed endeavor rises to a level of national importance.[1] Consequently we do not agree with the Petitioner's rational for concluding the Petitioner's proposed endeavor was nationally important.

Despite our disagreement with the Director's rationale, we do agree with the Director's ultimate conclusion that the Petitioner's proposed endeavor was not nationally important, albeit for different reasons. In determining national importance under *Dhanasar*, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on "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 a national importance for example, because it has

[1] These matters are relevant to a demonstration of eligibility under the second prong of the *Dhanasar* framework.

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. So it is not what duties or what occupation the noncitizen will fill or perform but their actual plan with their occupation and duties that is examined.

The Petitioner showcased their endeavor's potential global or national impact, any broader implications, and any positive economic effects stem from *their specific individual execution* of their proposed endeavor based on their past work in the field. And the corpus of the evidence the Petitioner submitted into the record does not stray far from this core assertion. But the Petitioner's assertion spotlighted a fundamental misunderstanding of the *Dhanasar* framework's first prong. The first prong focuses on the proposed endeavor; not on the Petitioner's execution of that proposed endeavor. The *Dhanasar* framework is consequently unconcerned with the success of the proposed endeavor or the Petitioner's track record in their field of endeavor previously.

For example, the Petitioner submitted several letters of recommendation into the record. But the mainly described the Petitioner's competent acquittal of their assigned job duties or otherwise described the work they did previously. The Petitioner's past successful performance of job duties does not support their endeavor's national importance. It is not sufficiently evident how the Petitioner's past performance of their duties has global or national implications, broader implications, or positive economic effects. And the research achievements the writers mention in their letters are in fields unrelated to the application or software development field the Petitioner proposes to house their endeavor in. Moreover whilst some of the letters referred to the Petitioner's [redacted] application development, they did not sufficiently describe how development of its application of software had national or even global impact or identify any broader implications emanating from its development.

In the same vein, the Petitioner's educational credentials and professional certificates earned from participation in seminars or continuing professional education exercises are not sufficient to demonstrate the national importance of their proposed endeavor.[2]

It is not evident from the Petitioner's professional plan how their proposed endeavor rises to a level of national importance. Whilst the professional plan describes the scope of the services it intends to perform, it does not sufficiently show how those product and services extend beyond the immediate vicinity of the persons or entities utilizing the product or services. Or in other words, it is not sufficiently clear how the Petitioner's development of a software application achieving human brain and computer symbiosis would have global or even national implications to their field beyond the individuals utilizing it. Nor does the professional plan identify the broader implications of the proposed endeavor. The Petitioner identified [redacted] as a novel method to display GitHub search results in an interactive way. But it is not evident how [redacted] benefits would broadly implicate matters rising to a level of national importance. For example, the Petitioner identified developing a new method through which to interact with search results and increasing understanding of software development by engineers and their employers as matters addressed by [redacted] But it is not

[2] The Petitioner's contentions about their successful past performance in the field of endeavor they propose, as well as evidence and information of their achievements and recognition, would better serve a demonstration of eligibility under the *Dhanasar* framework's second prong.

sufficiently clear in the evidence contained in the record how addressing these challenges has global or even national implications. Moreover, the record does not identify or adequately support any broader implications emanating from their proposed endeavor developing applications like [redacted]

We said in *Dhanasar* 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's appeal generally mentions the proposed endeavor's capacity for job creation and revenue generation. But the Petitioner's personal statement and professional plan do not identify any specific method or marker that sufficiently supports the employment creation or revenue generation that could be credited to their proposed endeavor.

USCIS may, in its discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, the submission of letters or opinion statements from experts supporting the petition is not presumptive evidence of eligibility. *Id*. The Petitioner submitted two expert opinion statements. But the opinion statements did not illustrate how the Petitioner's proposed endeavor rises to a level impacting national importance. Both writer's opinion focused only on the Petitioner's ability and achievement when rendering their opinion. As we stated previously the first prong focuses on the proposed endeavor. So, a petitioner's ability and achievement are not relevant considerations to evaluate the national importance of the proposed endeavor. The writers do not venture further from their description of the Petitioner's ability and achievement to evaluate the Petitioner's specific endeavor and how it can have a prospective positive impact nationally or globally or from the broader implications of its specific contributions to the information technology field. Nor do the writers sufficiently describe any positive economic impacts. Or in other words, the authors do not convincingly articulate the potential prospective impact of the Petitioner's endeavor so that a meaningful evaluation of the proposed endeavor's potential prospective impact can be made to determine if it rises to a level of national importance. Moreover, both authors are seemingly unconnected to the field of application or software development within which the Petitioner's endeavor proposes to function.

In sum, the record does not contain relevant, probative, or material evidence establishing the Petitioner's proposed endeavor has potential prospective impact either through national or even global implications, its broader implications to its field, or its positive economic effects. So we conclude that the Petitioner has not established that their proposed endeavor is of national importance.

III. CONCLUSION

For the aforementioned reasons, the Petitioner has not satisfied the first prong of the *Dhanasar* analytical framework. Because the evidence in the record does not establish that their proposed endeavor is nationally important as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated their eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding their eligibility under the second and third prong outlined in *Dhanasar*. *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).

ORDER: The appeal is dismissed.