U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35495011

Date: MAR. 19, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to employ the Beneficiary as a senior business applications analyst under the 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 Nebraska Service Center denied the petition concluding the Petitioner did not demonstrate the Beneficiary's eligibility for a national interest waiver. 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 withdraw the Director's decision and remand the matter for entry of a new decision.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification of the beneficiary 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.

If a petitioner establishes the beneficiary's eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id*. *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:

[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.

II. NATIONAL INTEREST WAIVER

A. Facts and Procedural History

The Petitioner stated that the Beneficiary's proposed endeavor was the "utilization of advanced computing, including cloud computing and data processing and analysis techniques, to develop data infrastructure for gaming and streaming services." The Petitioner asserted that the innovative solutions developed by the Beneficiary would maintain its status as a leader in the global video game industry, generate significant revenue for the U.S. economy, and have national implications on technology of interest to the U.S. government, namely, the advancement and development of advanced computing capabilities and technologies.

The Director correctly concluded that the Beneficiary was an advanced degree professional. The Director also determined the Petitioner submitted sufficient evidence to establish that the Beneficiary's proposed endeavor had substantial merit and national importance, meeting the first prong of *Dhanasar*, and that he was well positioned to advance his proposed endeavor consistent with the second prong. *Id.* at 889-90. However, the Director further concluded the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirements of the job offer and thus of the labor certification. *Id.* at 890-91. In making this determination, the Director stated the following:

> The evidence submitted does not establish the beneficiary has a degree of influence in their field at a level that would warrant waiver of the job offer requirement, and thus the labor certification. Further, the petitioner has not established their contributions are sufficiently urgent or time-sensitive, or that their knowledge and skills could not be easily articulated on a labor certification. The petitioner has not shown that they have knowledge or skills above that of a successful senior business analyst. Additionally, the petitioner has not submitted evidence of significant contributions to the business industry, or evidence to establish that they have skills that are atypical of a qualified U.S. analyst.

The Director further acknowledged the Petitioner's contention that the Beneficiary's proposed endeavor met the third prong based on his contributions to critical and emerging technology in a STEM (Science, Technology, Engineering, or Mathematics) field. However, the Director determined the Petitioner did not sufficiently demonstrate that the Beneficiary met the third prong on this basis, reasoning that "despite public and private investment, the U.S. is not developing an American STEM workforce to fill the jobs of the future." The Director further noted that the labor certification process existed to address shortages of workers.

On appeal, the Petitioner points to the USCIS Policy Manual and asserts it provides specific evidentiary considerations related to individuals with advanced degrees working on critical and emerging

technologies in a STEM field. The Petitioner contends that the Director improperly ignored these stated factors in the USCIS Policy Manual, applying a stricter standard. The Petitioner emphasizes that this guidance does not require USCIS to determine that a "beneficiary have a degree of influence in their field" and asserts this conclusion conflicts with the Director's determinations with respect to prongs one and two of *Dhanasar*. The Petitioner asserts that the Beneficiary's endeavor related to advanced computing technologies, specifically "data storage architectures and data processing and analysis techniques," represents critical and emerging STEM technology meeting the guidance for eligibility under the third prong balancing test articulated in the USCIS Policy Manual.

B. Analysis

Upon review, we will remand this matter for the entry of a new decision consistent with the following analysis.

First, we do not agree with the Director's determination that the Petitioner demonstrated the national importance of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar*. 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." *Id.* 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.*

In the denial, the Director stated that the Petitioner established national importance following a brief explanation of the Beneficiary's proposed endeavor. However, the Director provided no analysis as to how the Petitioner established this portion of prong one. Here, the Petitioner's focus when asserting national importance was on the general value of the Beneficiary's asserted field and a shortage of workers therein, but it did not sufficiently demonstrate that his specific employment would likely have a broad impact at a national level leading to breakthrough technologies in the digital entertainment industry or cloud infrastructure, as claimed. Likewise, the Petitioner emphasized the Beneficiary's past accomplishments; but this evidence relates to the second *Dhanasar* prong, being well-positioned, rather than the first prong of the *Dhanasar* framework specific to national importance. The Petitioner also submitted broad claims as to the far-reaching economic impact of the Beneficiary's proposed endeavor, citing its millions of users and billions of the dollars of revenue. However, the specific impact of the Beneficiary's proposed endeavor on the Petitioner's aggregate user and revenue numbers was not sufficiently established as necessary to show benefits to the U.S. regional or national economy reaching the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

In addition, the Director did not indicate whether the Beneficiary's proposed endeavor would have a broader societal impact by contributing to critical and emerging technologies in a STEM field; specifically, by helping the United States stay ahead of strategic competitors and potential adversaries and contributing to our nation achieving or maintaining technology leadership or peer status among allies and partners. *See* 6 USCIS Policy Manual F.5(D)(2). For these reasons, the Director's determination as to national importance is hereby withdrawn. On remand, the Director should fully analyze the issue of national importance consistent with the foregoing analysis.

Furthermore, the third prong of *Dhanasar* requires a petitioner demonstrate 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. *Dhanasar at 890*. As discussed, the Petitioner asserts the Beneficiary is eligible under the third prong of *Dhanasar* indicating that his proposed endeavor is focused on a critical and emerging technology in a STEM field. The USCIS Policy Manual outlines specific evidentiary considerations relating to STEM degrees and fields, including with respect to evaluating eligibility under the third prong. When evaluating the third prong and whether the United States may benefit from a person's entry, regardless of whether other U.S. workers are available, the USCIS Policy Manual instructs us to consider the following combination of facts contained in a record as a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

The benefit to the United States is considered especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested U.S. government agencies. *See* 6 USCIS Policy Manual F.5(D)(2).

In making their determination with respect to the third prong of *Dhanasar*, the Director focused on the degree of influence the Beneficiary had in his field; the urgency and time-sensitivity of his work; whether his knowledge and skills could be easily articulated on a labor certification; whether his knowledge or skills were above that of a successful business applications analyst; and whether he had made significant contributions to the business industry, among other considerations. However, the Director's analysis on the third prong did not sufficiently address the guidance specifically provided by the USCIS Policy Manual with respect to those asserting a beneficiary's eligibility with a proposed endeavor advancing a critical and emerging technology in a STEM field, namely, those factors we have discussed in the bullet points above. On remand, the Director should consider this guidance in their determination on the third prong of *Dhanasar*. *Id.*

We will therefore withdraw the Director's decision and remand the matter to the Director for the entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.