U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30625081

Date: MAY 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions with an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). 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. The Director concluded that the Petitioner did not demonstrate that he merits a discretionary waiver of the job offer requirement 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.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id. Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] Id.

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that 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.

Id.

II. ANALYSIS

The Petitioner proposes to work in the United States as a software engineer having worked in the information technology field in Brazil. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree. We agree with the Director's determination.[3]

However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar analytical prong. The Director further found that the Petitioner did not establish that he is well positioned to undertake the endeavor under *Dhanasar's* second prong, or 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 under *Dhanasar's* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.[4]

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a petitioner 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 is of national importance, we consider its potential prospective impact. Id.

The Petitioner proposes to work as a software engineer for a U.S. business. His professional plan explains that he intends to provide his "specialized services in software engineering, database

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] To demonstrate he is an advanced degree professional, the Petitioner submitted his diploma, his academic transcript, an academic evaluation, and employment verification letters. The record demonstrates that he holds the foreign equivalent of a U.S. bachelor's degree followed by more than five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

management, systems analysis, systems architecture, systems integration, project management and devops [sic], to impact the field of software development through innovation in the [United States]." (emphasis omitted). With the implementation of new software systems and products, the Petitioner maintains his work will help businesses reduce their costs and errors while increasing productivity, efficiencies, and profits. We agree with the Director that the Petitioner's proposed endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that "the prospective impact of his proposed endeavor rises to the level of national importance." The Director explained that the Petitioner did not show that his proposed endeavor has the potential to extend beyond his employer's business and its clients to impact the information technology field or the U.S. economy more broadly. Therefore, the Director determined that the Petitioner did not demonstrate that his endeavor is of national importance. Upon de novo review, the Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the Director's decision has "erroneous conclusions of both law and fact . . . ." (emphasis omitted). He maintains evidence submitted with his request for evidence response establishes his "proposed endeavor holds potential prospective impact, including national or even global implications in the field" and "positive economic benefits that reach beyond his employers and clients to benefit the nation."

The Petitioner's appeal mostly relies on his updated professional plan to show that his work as a software engineer will have broader implications in the information technology field, as well as economic, societal, and cultural benefits to the United States. He maintains that his professional plan shows how his software engineering knowledge, experience, and expertise would be used to provide "innovative approaches" for system analysis, data management, and project management to attain high quality results and meet client needs. By reducing software maintenance costs, increasing engineer productivity, and providing greater customer confidence in information technology solutions, he argues that his work would provide "significant time and financial savings for U.S. companies." In addition to the financial benefits to his employer's clients, the Petitioner further argues that his work has potential national and global economic implications. He maintains that his "leading cross-functional teams in product development, providing technical consultancy, and offering training and guidance" to information technology teams would "create opportunities to employ U.S. workers" and reduce unemployment rates. Focusing on his expertise in emerging and advanced technologies, he claims his work would foster innovation, attract investments, and contribute to "a favorable environment for startups and entrepreneurs."

In addition to the claimed economic implications of this work, the Petitioner argues his work has "the potential to broadly enhance societal welfare and cultural enrichment . . . ." He maintains his "expertise and contributions" would positively impact society by fostering "a culture of innovation, professionalism, and technical excellence." Also, his work would promote knowledge sharing and collaboration in the field while enhancing performance and reliability of software systems across various industries. His work provides the "potential to positively impact societal welfare by informing evidence-based decision-making, supporting scientific advancements, and addressing social challenges more effectively."

The standard of proof in this proceeding is a preponderance of the evidence, meaning that a 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.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner claims in his professional plan that his work as a software engineer for a U.S. company stands to provide economic, societal, and cultural benefits to United States. However, his claims that his work with U.S. companies will benefit the United States with new jobs, reduced unemployment, revenue generation, and innovations have not been established through independent and objective evidence. Without sufficient documentary evidence that his proposed job duties as software engineer for a U.S. company would impact the information technology field more broadly rather than benefiting his potential employer and its clients, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Matter of Dhanasar, 26 I&N Dec. at 893. We explained that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. Here, the evidence in the record mainly focuses on the Petitioner's work with his former employers and does not demonstrate that the Petitioner's proposed endeavor will have the claimed national or global implications in the field of information technology. As such, the Petitioner has not established that his proposed endeavor will substantially benefit the U.S. information technology field, as contemplated by Dhanasar.

Also, the Petitioner's reliance on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. His professional knowledge and experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake is of national importance under Dhanasar's first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Id. at 889. The Petitioner generally characterizes his work as "innovative approaches," however, he does not sufficiently detail such innovations or how his endeavor would be different from work typically performed by software engineers. Without further details and evidence, the Petitioner has not demonstrated his work as a software engineer for a U.S. company has the potential to impact his field more broadly rising to the level of national importance.

The Petitioner further claims on appeal that he demonstrated national importance with recommendation letters from his former colleagues which discuss his work experience and expertise as a software engineer. He points to a recommendation letter that attests to his technical knowledge and his work with a specific project, which "had true worldwide visibility, since other ports, shipowners, suppliers, partners, Brazilian customs agencies, and the multinational ICTSI group were following its progress." However, the content of this letter and the other letters relate to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. For instance, the letters attest to his technical competencies and professionalism

which helped his employers, colleagues, and clients. They describe the Petitioner's role for certain successful projects for his employers, including his work on certain software development and implementation projects. We acknowledge that the Petitioner provided valuable software engineering services for his employers in the past, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner further argues that his endeavor impacts a matter described by the U.S. government as having national importance or is the subject of national initiatives. Pointing to the U.S. President's 2023 budget which supports information technology and cybersecurity, he maintains his work as a software engineer relates to nationally important matters which are significant to U.S. national security because they are recognized by the U.S. National Science and Technology Council (NSTC) as critical and emerging technologies. He claims his work would impact specific fields on the NSTC's Critical and Emerging Technologies List Update, "communication and networking technologies" and "advanced computing" in data storage, computing architectures, and data processing and analysis techniques. We recognize the overall value of the information technology industry, attracting qualified professionals in related careers, and strengthening our nation's information technology and cybersecurity infrastructure. However, as the Director noted, the Petitioner has not demonstrated that his specific undertaking of working as a systems engineer for a U.S. company stands to have an impact beyond his potential employer and its clients, or that his proposed work would otherwise have broader implications for the information technology industry or U.S. information technology and cybersecurity initiatives. For instance, he does not claim, and the record does not establish, that he plans to introduce novel technologies or systems engineering advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to development of our nation's information technology or cybersecurity technologies.

To further support the national importance of his endeavor, the Petitioner submitted an opinion letter from an associate professor of computer science at [redacted] in New York. The opinion mainly focuses on the intended growth of the software industry and the Petitioner's professional knowledge and experience in his field. The opinion points out specific projects the Petitioner previously completed for his former employers and how such projects helped the efficiencies for those companies. The opinion also describes the Petitioner's knowledge with certain software development systems and claims that his work with these systems will help develop innovative products and services for U.S. businesses. The opinion further explains the need for qualified software engineers and that the Petitioner would transfer his knowledge to other U.S. workers. Instead of focusing on the Petitioner's specific endeavor having a prospective impact in the field of information technology, the opinion focuses on the need for information technology professionals and how the Petitioner's experience makes him well positioned to fill the need. While we acknowledge the importance of the information technology industry and related careers, working in the information technology field as a software engineer for a U.S. company is insufficient to establish the national importance of the proposed endeavor.

In the end, the Petitioner has not demonstrated that his proposed endeavor extends beyond his potential employers and their clients to impact the field or the U.S. economy, societal welfare, or culture more broadly at a level commensurate with national importance. The economic, societal welfare and cultural benefits that the Petitioner claims depend on numerous factors and the Petitioner did not offer

a sufficiently direct evidentiary tie between his software engineering work and those claimed benefits. Therefore, the Petitioner has not met the first prong of the Dhanasar framework.

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. This basis for denial is dispositive of the Petitioner's appeal, and we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, he has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.