U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36193001

Date: MAY. 02, 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 of 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 the record did not establish 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish that the Beneficiary is 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, they 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. *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;

[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 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 stated that the Beneficiary's proposed endeavor is to work as a senior [redacted] who "intends to leverage his expertise in advanced manufacturing engineering to improve and modernize [redacted] manufacturing automation processes." The Director's decision states that, based on the evidence of record, the Petitioner established his eligibility under the first and second prongs of the *Dhanasar* framework, but that he did not establish eligibility under the third prong.[2] We agree that the Petitioner has established that he is well-positioned to advance his proposed endeavor to work in the field of [redacted] engineering. However, upon review, because we do not agree with the Director's conclusions concerning the Petitioner's eligibility under the first and third prongs, we will remand this matter for the entry of a new decision consistent with the following analysis.

First, while we agree that the Petitioner demonstrated the substantial merit[3] of the Beneficiary's proposed endeavor under the first prong of the *Dhanasar* framework, 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. 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.*

In the denial, the entirety of the Director's analysis concerning the Petitioner's eligibility under the first prong of the *Dhanasar* framework consists of the following statement: "Information supplied with the initial petition along with the new evidence submitted with the Request For Evidence has established that the petitioner has met … Dhanasar's prong 1…." The Director provided no analysis as to how the Petitioner established national importance. Here, the Petitioner's focus when asserting national importance was on the general value of the Beneficiary's asserted field, but it did not sufficiently demonstrate that the Beneficiary's specific employment would have a broader impact beyond its customers or advance STEM technologies in the industry more broadly consistent with national importance.[4] Therefore, the Director's determination concerning national importance under the first prong of *Dhanasar* is withdrawn.

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[2] Although the decision does not address whether the Beneficiary qualifies for the underlying EB-2 classification as an advanced degree professional, the record sufficiently demonstrates his qualifying education and experience.

[3] The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education.

[4] USCIS recognizes the importance of progress in STEM fields, especially in critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security. *See* 6 USCIS Policy Manual F.5(D)(2). Some proposed endeavors that aim to advance STEM technologies have substantial merit in relation to U.S. science and technology interests and sufficiently broad potential implications to demonstrate national importance. However, *Matter*

Furthermore, the third prong requires a petitioner to 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. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications for the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* As noted below, the USCIS Policy Manual outlines specific evidentiary considerations relating to the fields of science, technology, engineering, and math (STEM), including with respect to evaluating eligibility under the third prong. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 891.

On appeal, the Petitioner asserts that the Director did not adequately review all of the evidence of record in evaluating whether, on balance, a waiver of the requirements of a job offer, and thus of a labor certification, would be in the national interest. We agree.

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).

With respect to the third prong of *Dhanasar*, the Director's decision focused generally on the degree of influence the Beneficiary has 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 mechanical engineer; whether he had made significant contributions to the business industry; and the job-creation potential of his proposed endeavor, among other considerations. However, the Director's analysis of the Beneficiary's eligibility under the third prong did not sufficiently address the guidance specifically provided by the USCIS Policy Manual regarding endeavors in STEM fields; the Director did not discuss the factors listed above concerning the Beneficiary's education and positioning to advance his proposed endeavor in a STEM field, nor

of Dhanasar highlighted that endeavors such as those 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.

did the Director address whether the Beneficiary would be engaged in advancing a critical and emerging technology of competitive importance to United States. On remand, the Director should consider this guidance in determining the Beneficiary's eligibility under the third prong of *Dhanasar*. *Id.*

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

III. CONCLUSION

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