U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31068651

Date: MAY 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) instructor, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the EB-2 category as a professional holding an "advanced degree." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of his national interest waiver request. On appeal, the Petitioner claims that the Director erred in finding insufficient evidence of: the "national importance" of his proposed endeavor; and a waiver's overall benefit to the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not established the claimed national importance of his proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as advanced degree professionals or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016).

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Nigerian native and citizen, earned a bachelor of technology degree in pure and applied physics in his home country in 2011 and a U.S. master of science degree in computer science in 2018. Since 2019, he has worked in the United States as an IT instructor and adjunct college lecturer.

The Petitioner works for an urban nonprofit agency that seeks to develop IT workers. He also works with an IT and cyber security educational program taught in about 12,000 academies in more than 190 countries. The Petitioner's duties include developing curricula and designing learning resources for students. During the three years before this petition's filing in 2022, he stated that he served more than 650 people and families.

The Petitioner proposes to continue working as an IT instructor in the United States. He says he would try to close the "IT-skills gap and STEM [science, technology, engineering, mathematics] education disparity among the economically depressed, underserved, and underrepresented minority groups."

B. EB-2 Eligibility

The record supports the Director's finding that the Petitioner qualifies for EB-2 classification as an advanced degree professional. The Petitioner documented his receipt of a U.S. master of science degree in computer science. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate").

C. Substantial Merit

The record also supports the Director's finding that the Petitioner's proposed endeavor has substantial merit. A proposed venture may have substantial merit if it "has the potential to create a significant economic impact" or relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889.

Evidence indicates that the Petitioner's continued work as an IT instructor could prepare U.S. workers for IT careers and provide more minorities with digital skills and STEM education. We therefore agree that the Petitioner's proposed endeavor has substantial merit.

D. National Importance

When determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

Noting that the Petitioner's proposed venture closely resembles one we considered in *Dhanasar*, the Director found insufficient evidence that his endeavor would broadly affect the U.S. IT, STEM education, or workforce development fields. In *Dhanasar*, the petitioner proposed teaching courses to U.S. university students in STEM disciplines. *Matter of Dhanasar*, 26 I&N Dec. at 893. We agreed that the endeavor had substantial merit. *Id.* But we concluded that the petitioner did not demonstrate the venture's purported national importance because he did not establish that he "would be engaged in activities that would impact the field of STEM education more broadly." *Id.* Like the petitioner in *Dhanasar*, the Petitioner's continued work as an IT instructor has substantial merit. But also like that petitioner, the Petitioner has not demonstrated that his activities would "more broadly" affect the IT, STEM education, and workforce development fields.

On appeal, the Petitioner asserts that the Director overlooked evidence of U.S. policies favoring educational and economic opportunities for minorities and immigrants. The Petitioner notes that recent executive orders call for advancement of educational equity and economic opportunities for Black students, families, and communities and removal of barriers impeding access to immigration benefits and fair, efficient adjudications. *See* Exec. Order No. 14050, 86 Fed. Reg. 58551 (Oct. 22, 2021); Exec. Order No. 14012, 86 Fed. Reg. 8277 (Feb. 2, 2021). The Petitioner states:

> I strongly believe that a correlation between the federal government pronouncements and all my submissions as related to the proposed endeavor would have helped the officer to correctly interpret the significance of my endeavor as being of national importance.

We recognize the importance of educational equity and economic opportunities for immigrants and minorities. But, as previously indicated, when considering national importance, we must focus on the *particular* proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). The Petitioner has not demonstrated that, under his specific endeavor, he would educate and train enough people to have national implications in the IT, STEM education, or workforce development fields. In *Dhanasar*, the petitioner's proposal to teach STEM courses also furthered the government's policy encouraging STEM education. *See generally*

6 *USCIS Policy Manual* F.(5)(D)(2), www.uscis.gov/policy-manual (recognizing the importance of progress in STEM fields to U.S. competitiveness and national security). But, looking at the petitioner's particular proposed endeavor, we found that the venture would not likely affect the U.S. STEM education field broadly enough. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the Petitioner has not demonstrated that his specific proposed endeavor – despite furthering important government policies – would have broad enough implications in his fields.

The Petitioner contends that his contributions are not limited to "small audiences" and that the educational program with which he works recognized him to be of "national and global importance." He submitted evidence that, in 2021, the program cited him as among the top 10% of expert-level instructors in the global program.[1] He states: "This achievement is a clear justification that my proposed endeavor transcends beyond just a classroom teacher, but rather it has a broader impact on the economy by increasing the number of qualifying IT/STEM workers nationally."

The Petitioner, however, has not sufficiently differentiated his proposed venture from the STEM-teaching proposal in *Dhanasar*. By teaching STEM courses to U.S. university students, the petitioner in *Dhanasar* would also have likely increased the number of IT/STEM workers. The online nature of the Petitioner's instruction might allow him to reach more students over a greater geographical area than the petitioner in *Dhanasar*. But the Petitioner has not shown that his proposal materially differs from *Dhanasar*'s STEM-teaching proposal.

For the foregoing reasons, the Petitioner has not established that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

E. Waiver Benefits

Our decision regarding the national importance of the Petitioner's proposed venture resolves this appeal. Thus, we decline to reach and hereby reserve consideration of his appellate arguments about a waiver's benefits to the United States.[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate appellate issues where a noncitizen did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that his proposed endeavor has national importance. Thus, under our framework, he does not qualify for a national interest waiver. We will therefore affirm the petition's denial for lack of a valid labor certification.

[1] The Petitioner submits evidence that the program also recognized him as a top instructor for 2022 and that he has established his own IT/STEM teaching website. The record, however, indicates that he received the 2022 recognition and formed his website after the petition's filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request"). Thus, when reviewing this matter, we cannot consider the 2022 recognition or his website.

[2] The Director found the Petitioner well positioned to advance his proposed endeavor.

ORDER: The appeal is dismissed.