U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31223372

Date: MAY 28, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, [redacted] seeks second preference immigrant classification (EB-2) for the Beneficiary, its software engineer, 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 EB-2 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 although the Beneficiary qualified for classification as an advanced degree professional and his endeavor has substantial merit, the Petitioner had not established that the Beneficiary's endeavor is of national importance, that he is well positioned to advance the proposed endeavor, or that, on balance, 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 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.

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 (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;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Beneficiary's endeavor is to work at [redacted] as a software engineer and a member of the [redacted] Software-Defined-Networking (SDN) team that "[develops] cutting-edge innovations in the field of Big-data, Cloud computing, [and] Computer networking." The Petitioner stated that "[the Beneficiary's] role to build the next generation of the [redacted] stack will help user[s] get fast deployment, more secure network[,] and cutting-edge on-demand cloud computer resource."

The record shows that since obtaining a master's degree in computer science at [redacted] in May 2017, the Beneficiary has worked as a software and data engineer and his present employment at [redacted] began in May 2022.

The Director concluded that the Petitioner did not demonstrate that the Beneficiary's endeavor is of national importance under the first prong of the *Dhanasar* analytical framework. For the reasons discussed below, we agree with the Director.

To evaluate whether the proposed endeavor satisfies the national importance requirement we focus on the specific endeavor that the foreign national proposes to undertake and look to evidence documenting its "potential prospective impact." *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.

The Petitioner contends that the national importance of the Beneficiary's endeavor is evident from the widespread usage of [redacted] as "one of the largest [redacted] service providers in the United States" and from the company's innovative technologies relating to software-defined networking or SDN. In response to the Director's request for evidence (RFE), the Petitioner again claimed that [redacted] is "one of the largest [redacted] service providers" widely used by schools and universities, healthcare organizations, and government agencies. The Petitioner also stated that "the work and products being developed by [redacted] in Big-Data, Cloud Computing, and

[1] *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 is discretionary in nature).

Computer Networking contribute immensely to the United States as a whole" by "[fostering] economic growth and job creation" and "enhancing the country's technological capabilities."

Although we acknowledge that the Beneficiary's role as a software engineer is important in developing the [redacted] the Petitioner has not demonstrated that the economic implications and technological advancements resulting from the company's operations would be directly attributable to the Beneficiary's particular role as a software engineer. The issue here is not the broader implications of the company's innovations in SDN or the utilization of its products by government and industry, but rather the potential prospective impact of the Beneficiary's specific proposed work as a software engineer.

Furthermore, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the Petitioner largely relied on the industry articles and reports to claim that the field of the endeavor has national importance, instead of focusing on the Beneficiary's specific work. With the appeal, the Petitioner again submits reports and articles showing that the importance of SDN and cloud computing technology, as well as the U.S. National Science and Technology Council's updated list of critical and emerging technologies, claiming that the Beneficiary's work aligns with the important priorities of the government. We recognize the value of such technological innovations and importance of STEM related professions; however, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

On appeal, the Petitioner contends that the Director did not consider "concrete examples of public and private organizations that already rely on software defined networking (SDN), the technology designed by the beneficiary." However, none of the articles and reports specifically mention the Beneficiary's name or his work or discuss the government's interest in promoting the use of the Beneficiary's specific innovation or solutions, such that it has "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner further contends on appeal that the Director did not consider pertinent documentary evidence on record, such as the letter from [redacted] the Beneficiary's manager at [redacted] or the expert opinion letter from [redacted] a professor of computer science and a chair of the software engineering program at [redacted] in New York. The Beneficiary's manager at [redacted] describes his skills, knowledge, and commitment in building the next generation of SDN in [redacted] and that he is a "valuable member of my team inside [redacted] However, the letter only shows the Beneficiary's accomplishments in his past engagements and projects and does not sufficiently address his specific future endeavor and its broad impact in his field. In addition, the Beneficiary's knowledge, skills, and experience in the field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.

In analyzing the national importance of the endeavor, the expert opinion letter from Professor [redacted] focuses only on the importance of the cloud computing field. For example, the letter states

that the Beneficiary's "proposed field of endeavor is particularly important to US technological competitiveness and national security" and "cloud systems are a fundamental aspect of the networking infrastructure on which public and private sector entities depend." But the letter does not include any persuasive and corroborating information about the Beneficiary's proposed endeavor and its impact rising to the level of national importance. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l*, Inc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought and the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the expert opinion letter is of little probative value as it conflates the importance of the field overall with the national importance of the Beneficiary's specific endeavor.

Although the Petitioner asserts that the Director did not evaluate the totality of the evidence on record, the Director has clearly acknowledged and analyzed various documents on record but concluded overall that the quality of the evidence lacked probative value in supporting national importance of the endeavor. Under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *see also Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Moreover, the Director is not required to name every single evidence on record. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993). We conclude the record reflects the Director's consideration of all evidence in the totality even though the Director did not address each piece of evidence individually.

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. *Id.* at 893. Here, we agree with the Director that the Petitioner did not sufficiently demonstrate how the Beneficiary's proposed endeavor stands to extend beyond his employer, its business partners, and its clientele to impact the software networking industry more broadly at a level commensurate with national importance. Nor has the Petitioner shown that the Beneficiary's particular research or other future projects offer original innovations that contribute to advancements in the cloud-computing industry, or otherwise has broader implications for the field. Accordingly, without sufficient documentary evidence of their broader impact, the Beneficiary's proposed work as a software engineer in the SDN team within [redacted] do not meet the "national importance" element of the first prong of the *Dhanasar* framework.

Because the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated the Beneficiary's eligibility for a national interest waiver and further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose. *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"); *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, we conclude that the Petitioner has not established that the Beneficiary is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.