U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30681087

Date: MAY 30, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a systems engineer, seeks second preference immigrant classification (EB-2) as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 Petitioner qualified for the underlying classification as an advanced degree professional and his endeavor has substantial merit, he had not established that his 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

Upon de novo review, we agree with the Director's conclusion that the Petitioner did not establish national importance of his endeavor. The Petitioner's proposed endeavor is to work "as a System Engineer to apply my knowledge to develop and launch new systems and products" and "help companies from different sectors improve their internal processes and achieve their goals more effectively." The Petitioner also added that "[t]o start my endeavor, I will be focusing specifically on the food industry with the goal to develop innovative systems to optimize processes in this field." In response to the Director's request for evidence (RFE), the Petitioner again stated that "I intend to perform as a System Engineer and provide my specialized services in quality, product, and operations engineering to impact the field through innovation in the U.S."

Despite the Petitioner's claims, the initial filing or the RFE response did not provide persuasive details or corroborating documents regarding his future endeavor's innovations or its prospective impact. Instead, the Petitioner's statements and letters generally discussed a growing demand for system engineers and a talent shortage in the engineering industry, as well as past projects and technologies that he utilized while working for his former employers. We acknowledge that the Petitioner's endeavor assisting companies to create efficient and innovative systems has substantial merit; but the relevant question for determining the endeavor's national importance 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" and "consider its potential prospective impact." *Id.*

We stated in *Dhanasar* 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.* The Petitioner included two separate expert opinion letters as evidence of his endeavor's national importance, but the authors of these letters summarize the information already provided by the Petitioner's resume and statements, such as his educational and employment background, and statistics and outlook on relevant industry and occupation. For instance, the expert opinion letter from [redacted] a professor of manufacturing engineering department at the [redacted] explains that the Petitioner specializes in "embedded systems . . . in the food industry and retail sale of fractional beverages" 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).

"customized solutions – SOC (System On a Chip) programming oriented to IoT (internet of things) as well as "implementation of ISO 9000 certification and production development." However, the letter largely discusses the economic significance of the manufacturing industry and the importance of small businesses to the U.S. economy, instead of elaborating on the Petitioner's specific endeavor and innovations.

Another expert opinion letter from [redacted] an assistant professor of operations management at [redacted] claims that the Petitioner "has developed customized solutions including System on a chip programming for IoT devices to address challenges faced by consumers and clients." However, this letter also does not offer details regarding the Petitioner's innovative solutions but generally opines on the critical role of systems engineers in "reducing risk and managing complexity" and the importance of STEM professionals to the economy. The letter claims that the Petitioner's endeavor "supports areas of national importance, as it helps to enhance the country's technological capabilities and strengthen its strategic position in the global arena" but does not provide corroborating information to support the endeavor's broad 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 will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as the evaluator does not meaningfully address the details of the endeavor.

On appeal, the Petitioner claims that his endeavor has national importance because systems engineering in general "inherently involves interaction with various stakeholder, partners, and collaborators across the field" and being a systems engineer is "inherently collaborative and impactful on a broader scale." While any basic economic activity has the potential to positively impact the economy, the record does not demonstrate how working for a company or companies as an individual systems engineer generates such significant economic activity that rises to the level of "substantial positive economic effects." *Dhanasar*, 26 I&N Dec. at 890. Without evidence regarding any projected U.S. economic impact or job creation directly attributable to his future work, the Petitioner's claims of his endeavor's "far-reaching implications" such as "economic growth, job creation, revenue increase, and societal welfare" are too attenuated to sufficiently show the proposed endeavor's impact at a level commensurate with national importance.

The Petitioner also contends that his endeavor "contributes to the innovation and efficiency of engineering processes, which have significant implications for various industries and, consequently, the national economy." However, the Petitioner has not offered any new evidence on appeal to corroborate his claims regarding his endeavor's innovations and broad implications. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record contains emails from recruiters expressing interest in hiring the Petitioner and reference letters praising his handling of past projects and skills in various technologies relating to the systems engineering in the food industry; however, such evidence regarding the Petitioner's experience, skills, and abilities relates to the second prong of the *Dhanasar* framework,

which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. Under *Dhanasar*'s first prong, the issue is whether the specific endeavor that the Petitioner proposes to undertake has national importance.

The Petitioner further claims that "my proposed endeavor aligns with the broader US government initiative to bolster STEM." However, simply pursuing an endeavor in a STEM field does not automatically demonstrate eligibility for a national interest waiver, especially when the Petitioner does not intend to advance STEM technologies and research but seeks to work as an individual systems engineer. Without providing corroborating documents regarding the endeavor's broad implications to the field, the Petitioner has not demonstrated that his endeavor would extend beyond his employer and its clientele to the level of national importance, in the same way *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly. *Id.* at 893.

Accordingly, we conclude that the Petitioner did not establish national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and therefore, he has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs of *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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

The Petitioner has not established the national importance of his proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.