U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34859055

Date: NOV. 14, 2024

Appeal of Texas 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 as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's eligibility for the requested national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes 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. 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 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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, but failed to establish eligibility for a national interest waiver under the *Dhanasar* framework. For the reasons set forth below, we agree that the Petitioner has not met the *Dhanasar* framework and dismiss the appeal.

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The Petitioner intends to work in the United States as an information security analyst to provide cybersecurity solutions to help businesses protect their digital assets and optimize their business operations. According to the Petitioner, he intends to focus on consulting, auditing, designing, implementing, and operating information security management systems and elevating the information security standards of U.S. companies. Specifically, in his professional plan, the Petitioner asserted that he would monitor security controls to identify vulnerabilities and safeguard digital files, and investigate information security breaches in order to make informed recommendations for information security enhancements. Additionally, he intends to ensure compliance with regulatory frameworks, and conduct assessments of organizations' information security policies, procedures, and technical safeguards to ensure compliance with regulatory mandates surrounding the security of financial transactions. Through this work he aims to enhance efficiency, reliability, and effectiveness of safeguarding data and systems and reducing data breaches and cyber threats, which he claims will lead to significant social and economic advantages.

In support of his endeavor, the Petitioner submitted two professional plans, a personal statement, articles and industry reports on the cybersecurity industry and prevalence of data breaches, government fact sheets on the national cybersecurity strategies, the use of artificial intelligence in cybersecurity, an expert opinion letter, as well as several letters of recommendation. The Petitioner also cited to several additional industry articles, reports, and government publications providing statistics on data breaches and the economic and social impact of data breaches.[2]

[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).

[2] While we do not discuss each piece of evidence contained in the record individually, we have reviewed and considered each one.

Upon review of the complete record, the Director concluded that, while the Petitioner established the substantial merit of his endeavor, the Petitioner had not shown that his work would rise to the level of national importance contemplated in *Dhanasar*. Specifically, the Director determined that the record did not show his work would result in broader implications to his field, beyond the benefits to his prospective employers or clients. And the Director concluded that the Petitioner had not established that his endeavor would result in substantial economic effects contemplated in *Dhanasar*.

On appeal, the Petitioner generally disagrees the Director's conclusions, and asserts that the Director did not properly consider the evidence in the record establishing his eligibility for a national interest waiver under the *Dhanasar* framework. Specifically, the Petitioner asserts that the evidence establishes the broader implications of his endeavor and its contributions to national security and the U.S. economy. Notably, however, the Petitioner does not point to specific examples of how the Director erred in their analysis of the evidence. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding.[3] By presenting only general disagreement with the Director's decision, without identifying the specific aspects of the denial he considers to be incorrect, the Petitioner has failed to sufficiently identify the basis for his appeal.[4] Nevertheless, we have reviewed the record and agree with the Director that the Petitioner has not established the national importance of his endeavor under the first prong of the *Dhanasar* framework.

Upon de novo review, we conclude that the record does not establish, by a preponderance of the evidence, that the Petitioner's proposed endeavor has national importance. The Petitioner claims on appeal that his endeavor is designed to bolster the cybersecurity framework of the United States. Specifically, the Petitioner asserts that, by providing high-level cybersecurity solutions and fortifying the security infrastructure of his prospective clients' businesses, he will significantly reduce the risk of cyberattacks and service disruptions. Accordingly, the Petitioner asserts that his endeavor "is crucial for preserving national assets, including government data, defense systems, intellectual property, financial and transactional systems, and essential infrastructure." However, the Petitioner does not explain how the services he will provide to his prospective employer(s) or customers would result in broader implications to his field. Instead, he primarily relies on the importance of the cybersecurity occupation and industry rather than the prospective impact of his *specific* endeavor.

But in *Dhanasar* we said that, 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." *Dhanasar* 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.* 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.

[3] *See* 8 C.F.R. § 103.3(a)(1)(v).
[4] *Matter of Valencia*, 19 I&N Dec. 354, 354–55 (BIA 1986).

Although the Petitioner's statements in the record reflect his intention to provide valuable services to his future employer(s) and customers, the record does not support his assertions that his work will result in broader implications to the field, beyond the potential benefits to his immediate employer(s) or customers. While he asserts, for example, that through his work he will develop advanced payment security systems, and robust fraud detection algorithms to enhance security and protect businesses from financial losses, he has not provided details or evidence regarding these systems or explained whether these systems or algorithms would lead to national or global implications within his field commensurate with national importance, or otherwise could be analogous to the "medical advances" contemplated in *Dhanasar*. *See Dhanasar* at 889. The Petitioner has not shown, for example, that any security systems or standards that he develops, even if adopted and used by his employer(s) or customers, would otherwise lead to broader implications to the field. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). 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. *Dhanasar* at 893. Here too, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his prospective employer(s) or customers to impact his field more broadly at a level commensurate with national importance.

We have also reviewed the articles, industry reports, and government publications relating to data breaches and the cybersecurity field, as well as the governmental interest in ensuring data security, and conclude that they do not establish the national importance of the Beneficiary's endeavor. The articles in the record do not discuss his specific work, or otherwise establish how his work will result in broader implications to the industry. Instead, this evidence supports the endeavor's substantial merit. Similarly, we conclude that the Petitioner's assertions regarding a claimed shortage in his field do not establish the national importance of his specific endeavor. The national interest waiver is not intended to address labor shortages. A shortage of qualified professionals alone does not render the work of an individual cybersecurity professional nationally important under the *Dhanasar* precedent decision.

Likewise, while we have reviewed the expert opinion letter in the record, we conclude it provides little probative value in establishing the national importance of the Petitioner's specific endeavor. In their letter, Dr. C-F- states that the Petitioner's work would significantly contribute to national efforts to improve cybersecurity resilience and readiness, but the writer does not explain *how* his work would impact these initiatives on a broader scale beyond the direct benefits to his employers or customers, and instead relies on the cumulative impact of the cybersecurity field and the work of cybersecurity professionals when discussing the importance of the proposed endeavor. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id., see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on relevance, reliability, and the overall probative value).

The record also does not establish that the Petitioner's endeavor "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *See Dhanasar* at 890. The Petitioner claims that his work will significantly contribute to the U.S. economy by safeguarding financial transactions, reducing financial losses caused by cyber-attacks, and protecting sensitive information. But the Petitioner's economic claims primarily rely on the cumulative economic benefits of the cybersecurity industry rather than establishing how his endeavor will result in the substantial economic benefits contemplated in *Dhanasar*. *Id.* The Petitioner has not shown, for example, how any protections provided to his employers and customers would result in substantial economic effects commensurate with national importance. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not provided sufficient information or evidence regarding the economic impact or job creation directly attributable to his future work (as opposed to the general economic impact of the industry).

And we acknowledge the Petitioner's reference to USCIS policy recognizing the importance of STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress,[5] but the Petitioner has not shown that his endeavor will foster progress in STEM technologies or result in broader implications to his field. 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.

Likewise, while we recognize that the Petitioner has had a successful career and has executed several critical projects for his former employers, a petitioner's expertise and record of success are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id*. at 890. The issue here is whether the Petitioner has demonstrated the national importance of his proposed endeavor. We conclude that he has not.

For all the reasons discussed, the evidence does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's eligibility and appellate arguments under *Dhanasar*'s second and third prongs. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

ORDER: The appeal is dismissed.

[5] 6 *USCIS Policy Manual*, *supra*, F.5(D)(2).