U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33951137

Date: OCT. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a technology company, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, for the Beneficiary 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 proposed endeavor is of national importance or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification.[1] 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).

[1] The Director's decision did not address if the Beneficiary is well positioned to advance the endeavor, or if the endeavor is of substantial merit. The Petitioner's appeal brief states that the Director "appears to have conceded" the proposed endeavor's substantial merit and that the Beneficiary is well positioned to advance the proposed endeavor. This is inaccurate.

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. *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,[2] 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 found that the Beneficiary qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance

The first 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The appeal brief states that the Beneficiary works at the Petitioner's company as a Senior Program Manager. In her position, she evaluates regulatory compliance and risk management for the Petitioner's clients and determines how best to tailor the Petitioner's technologies to their clients' needs. She guides her engineering team to then design these customized tools within the Petitioner's platforms and guides the clients in implementation. The evidence provided does establish that the proposed endeavor is of substantial merit. However, the evidence does not demonstrate that the specific endeavor is of national importance.

In determining national importance, 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." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

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. To evaluate whether the proposed endeavor satisfies the national importance requirement we look to evidence documenting the potential prospective impact of the Beneficiary's work. 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. 26 I&N Dec. at 893.

Here, the Petitioner has not sufficiently established how the Beneficiary's position as a program manager will have a broader impact on the field beyond the Petitioner's company and clients, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first *Dhanasar* prong. 26 I&N Dec. at 889. In their response to the request for evidence (RFE), the Petitioner contends that the proposed work is nationally important because it ensures that "U.S. and foreign corporations transacting in the U.S., maintain robust compliance and risk management infrastructure utilizing sophisticated cloud computing platforms to meet strict regulatory provisions" set by the government.

We observe that the functions described in the letters from the Beneficiary's supervisors show that her work facilitates the Petitioner's operations as it focuses on molding the Petitioner's software to its clients' needs. These are tasks that support the Petitioner, as they allow the Petitioner to sell its software. Nevertheless, the evidence does not sufficiently demonstrate how the Beneficiary as a single employee would affect the software regulatory compliance field more broadly beyond her set of clients, significantly employ U.S. workers, or have substantial positive economic effects as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889.

We note that the Petitioner contends that "due to [redacted] reach and dominance within the relevant field…it would be severe error to find that [the Beneficiary's] endeavor does not have national importance because her endeavor is focused on her work for her employer." Nevertheless, the Petitioner cannot rely on its market share alone to claim the Beneficiary's work is nationally important. It must show how the functions and tasks *carried out by the Beneficiary* coalesce into a nationally important endeavor.

The record overall does not adequately demonstrate national importance either.[3] The Petitioner provided a number of articles, reports, publications from the Petitioner, and letters of recommendation.[4] Many of the articles and reports provide background on the field or explain the field's importance. The importance of the field does not determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. Furthermore, though the articles and reports provide background information, and some describe generally how the Petitioner utilizes its software for clients, they are of little evidentiary value to the issue of national importance. This is because they do not address the Beneficiary's specific work or how it would have broad implications in the regulatory compliance field in a way that implicates national importance.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

[4] We note that one of the articles submitted in response to the RFE originated after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

The Petitioner also provided a letter from Dr. [redacted] a professor in computer science and information systems at [redacted] As a matter of discretion, we may use opinion statements submitted by a 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.* In this letter, Dr. [redacted] describes the merit and importance of professional endeavors in software engineering, generally. He does not mention the Beneficiary or her specific work. As such, the letter is of little evidentiary value. *See Dhanasar*, 26 I&N Dec. at 889 (noting that the focus of prong one is not the importance of the field, industry, or profession but the specific endeavor the noncitizen proposes to undertake).

We acknowledge that in his letter of support, the Beneficiary's supervisor, [redacted] states that the Beneficiary is responsible for assisting multinational Fortune 500 companies in designing their operating software to meet regulatory requirements. Yet adequate documentation to support this claim has not been submitted. Contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Without more documentation supporting the claim, there is not enough in the record to establish the national importance by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the proposed endeavor will sufficiently extend beyond the Petitioner to affect the field of advance computing more broadly. *Dhanasar*, 26 I&N Dec. at 893. For the reasons given above, we find that the record does not demonstrate national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and has not demonstrated eligibility for a national interest waiver.

As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *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

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that they have 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.