U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33365753

Date: OCT. 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmaceutical company, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary 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 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 Beneficiary is an advanced degree professional and that a national interest waiver is merited. 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 found that the Beneficiary did not qualify as a member of the professions holding an advanced degree. Specifically, the Director determined that while the Beneficiary has a foreign equivalent to a U.S. bachelor's degree, the Petitioner did not establish that he has five years of progressive experience in the specialty.[2] The Director also determined that the Petitioner did not establish that any of the three prongs of the *Dhanasar* analytical framework were met. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of the proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to the proposed endeavor, the Petitioner's initial statement provided that the Beneficiary's endeavor "consists of his serious determined effort to continue to streamline and ensure the quality of pharmaceutical research, development, and regulatory approval processes through the development, enhancement, and maintenance of cloud, DevOps, and database systems. [The Beneficiary] will continue to contribute advanced technical skills, highly specialized knowledge, and immense talent to a dynamic, U.S.-led industry. He will do so while advancing his career, diversifying the U.S. STEM workforce, and functioning as an extremely productive member of society." The Beneficiary stated, in part, "[a]s Senior Manager IT Operations Management for [Petitioner's] Database and Operations Team, I am specifically enhancing the operation of clinical data management systems to automate the drug development process and protect sensitive patient data. As it can usually take anywhere from 10-15 years for a drug to go through the regulatory approval process, I integrate the latest cloud and AI automation technologies to [Petitioner's] clinical databases to optimize this process. These technologies accelerate each step of the drug development process. For example, they automate clinical research by providing researchers with laboratory process workflows. They also recognize patterns in clinical data for biostatisticians to conduct data analysis to support regulatory submissions. The automated databases also support regulatory professionals by creating data storage and backup systems for storing clinical data in the case of an audit. I oversee the migration of our clinical databases to the cloud, which facilitate[s] data sharing with third-party collaborators to fuel further drug discovery opportunities. I also specifically incorporate the latest data security and backup system technology to protect sensitive patient data."

[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] We will not address whether we agree with this finding as the determination that the proposed endeavor lacks national importance is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

In addition to the above statements, the record includes, but is not limited to, multiple briefs; articles, government information, and industry reports related to cloud computing, data integrity, and the pharmaceutical industry; Petitioner company records and information about company products; and educational, employment, and immigration records for the Beneficiary.

The Director determined that the proposed endeavor has substantial merit, but the Petitioner did not establish that it has national importance. The Director described the proposed endeavor and mentioned the Petitioner's assertion that it has prospective impact at a national level because it manufactures and distributes, at a national level, therapeutics that are discovered and improved because of clinical trials. The Director noted that the Petitioner must demonstrate how the Beneficiary providing cloud-based data management systems services has the potential to broadly enhance or contribute to the advancement of U.S. healthcare or the U.S. pharmaceutical industry. The Director found that the Petitioner did not establish how the proposed endeavor has the potential to create a significant economic impact or have broader implications, rising to the level of a substantial positive economic effect as contemplated by *Dhanasar*. The Director found that the Petitioner did not show how the proposed endeavor stands to sufficiently extend beyond its organization and its clients to impact the industry or field more broadly. Finally, the Director stated the Petitioner did not provide sufficient evidence of the proposed endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor has national importance.

On appeal, the Petitioner argues that the Director failed to consider the totality of the evidence in finding the proposed endeavor does not have national importance. The Petitioner states that the Director failed to consider the whole administrative record, which includes over a thousand pages; ignored substantial evidence; and failed to reach a reasoned decision as required by the Act, the Administrative Procedure Act, regulations, and agency precedent. We will address the record, as it relates to the issue of national importance, in our decision.[3] 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 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. *Id.* at 893.

Here, the Petitioner has not sufficiently established how the Beneficiary's position as a senior manager in information technology operations management will have a broader impact on the information technology operations management field or the pharmaceutical field beyond the Petitioner's company

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

and customers, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first *Dhanasar* prong.

We observe that the functions described in the proposed endeavor show that the Beneficiary's work facilitates the Petitioner's operations through the development, enhancement, and maintenance of cloud, DevOps, and database systems. Additionally, the Petitioner points to the Beneficiary's statement about the proposed endeavor, in which he stated that his work "ensures that [the Petitioner's] clinical databases work at maximum operational efficiency. [The Petitioner] is currently conducting, enrolling, or recently completed 555 clinical trials that all produce vast amounts of clinical data. I constantly upgrade and migrate new database enhancement features into our clinical databases to expand data storage and data security capabilities. The databases that I develop, enhance, and maintain are used at every step of the drug development process. [The Petitioner's] clinical research, statistical programming, regulatory affairs, and manufacturing teams all rely on the automated processes the databases provide. Whenever issues arise within our database system, I lead my team via DevOps procedures to quickly identify and analyze the issue to ensure that drug development can proceed without delay." The Petitioner emphasizes how this work accelerates its medical research and clinical trials, ensures the safety and efficacy of its therapeutics, and is nationally important as it has nine FDA-approved medicines including two of the top ten medicines of 2022. Additionally, the Petitioner asserts the Beneficiary's specific proposed endeavor has the potential to broadly enhance or contribute to the advancement of U.S. healthcare or the U.S. pharmaceutical industry. The Petitioner claims that there are broader implications, including the Beneficiary leading the effort to design, implement, and optimize an Amazon Workspace cloud system that allows it to quickly and seamlessly share clinical trial data to all external research partners and partnering healthcare providers; the Beneficiary managing multiple database operations projects for enhancements and upgrades that have added cloud computing and artificial intelligence capabilities to its research activities; and the Beneficiary driving the incorporation of DevOps enhancements into its database systems to automate several key drug research and development stages within the lifecycle of an investigational pharmaceutical therapeutic.

The record reflects that these are tasks that support the Petitioner, as they allow the Petitioner to streamline and ensure the quality of pharmaceutical research, development, and regulatory approval processes for its products. The Petitioner has not sufficiently demonstrated how the Beneficiary as a single employee would affect the information technology operations management or pharmaceutical fields more broadly beyond its customers, or how his proposed endeavor would result in significant employment of U.S. workers or have substantial positive economic effects as contemplated by the first *Dhanasar* prong.

The record includes company financial records and information about company products showing it is a large pharmaceutical company. However, 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 Petitioner states that it described how in the last five years it has entered into more than 75 licensing and collaboration agreements with U.S. federal agencies, non-profit organizations, universities, private pharmaceutical companies, and healthcare systems, all of which will be strengthened and enhanced due to technological innovations made by possible by the Beneficiary and his team. The Petitioner states that the proposed endeavor has the prospective potential impact to enable groundbreaking discoveries and advancements by the Beneficiary instantly sharing research and clinical data, allowing for the

utilization of artificial intelligence to assess research outcomes, and by automating clinical data analyses. The Petitioner mentions that its medical discoveries are publicly distributed by them and their numerous partners through scientific journal articles, international conference presentations, and U.S. patent filings; the subject matter of the research endeavors emphasizes the broader implications to the knowledge base of the global medical science community and treatment options for U.S. patients; the sheer volume of partnerships makes it more likely than not that the Beneficiary's technological innovations will generate viable medical treatments resulting in its partners adding U.S. jobs and generating new revenues nationally and globally; and societal welfare will be broadly enhanced through the likelihood of new vaccines, drug targets, and, medicine. The record does not include supporting documentation of the Petitioner's licensing and collaboration agreements. Regardless, the record does not include evidence that the Beneficiary has developed technological innovations that have broader implications within his field or the pharmaceutical field.

The Petitioner provided articles, government information, and industry reports related to cloud computing, data integrity, and the pharmaceutical industry. Many of the articles and reports provide background and the importance of the Beneficiary's field and the Petitioner's industry. The importance of a 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, 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 broader implications in the information technology operations management or pharmaceutical field in a way that implicates national importance.

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 information technology operations management or pharmaceutical fields more broadly. For the reasons given above, we find that the record does not demonstrate the 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 Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.