U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33943646

Date: SEP. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a technical project manager, seeks employment-based second preference (EB-2) immigrant classification 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 a waiver of the job offer requirement is 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.

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. 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.

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

Matter of Dhanasar, 26 I&N Dec. at 889.

The Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. Based upon the evidence in the record that the Petitioner possesses the foreign equivalent of a Ph.D. in mechanical engineering, we agree. The Director also concluded that the proposed endeavor has substantial merit, and that the Petitioner is well-positioned to advance it. However, the Director concluded the Petitioner did not demonstrate eligibility for a national interest waiver because he did not establish the national importance of the proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. For the reasons discussed below, we agree with the Director that the Petitioner has not established the proposed endeavor's national importance and therefore has not established eligibility for a national interest waiver.

The Petitioner proposes to develop thermal performance models and thermal management designs for sustainable, cost-effective, and energy efficient electronic cooling solutions for applications including data centers, cloud computing, telecommunications, semiconductor and consumer electronics. The Petitioner intends to pursue this endeavor through employment as a technical project manager and states that he would seek employment with a company such as "Amazon AWS."

On appeal, the Petitioner claims that the Director erred by primarily focusing on the potential economic impact of the endeavor and by conflating the Petitioner's proposed endeavor with the Petitioner's employment. The Petitioner also asserts that the proposed endeavor represents a potential "improved manufacturing process" as described in *Matter of Dhanasar* and is therefore nationally important.

First, we disagree with the Petitioner's characterization that the Director's "rationale regarding national importance is almost entirely focused on economic benefits." The Petitioner contends that *Matter of Dhanasar* discusses potential employment of U.S. workers and other potential economic benefits as only examples of the ways in which national importance may be established, and that demonstrating economic benefits is not "a standard of adjudication." We agree with the Petitioner that demonstrating potential positive economic impacts is not required to demonstrate an endeavor's national importance. *See Matter of Dhanasar*, 26 I&N Dec. at 889. However, the Director's decision did not state or imply that potential positive economic benefits are required for a finding of national importance. Rather, the Director discussed potential economic benefits only as one of the ways in which national importance may be—but in this case was not—established. The Director's consideration of whether the proposed endeavor has the significant potential to employ U.S. workers or otherwise offers substantial positive economic effects is appropriate in the national importance analysis and in line with our decision in *Matter of Dhanasar*. *See id.*

Second, we appreciate the distinction that the Petitioner draws between, on the one hand, the proposed endeavor and, on the other, the employment that the Petitioner will hold in furtherance of that endeavor. Nevertheless, we conclude that the Director's consideration of the Petitioner's employment plans as part of the national importance analysis did not improperly conflate the two in this instance. Here, the consideration of the way in which the Petitioner intends to implement his proposed endeavor—specifically, by working as a technical project manager for a company such as Amazon—is an appropriate consideration for the national importance analysis because it has the potential to affect the potential prospective impact of the proposed endeavor. Counsel's appellate brief urges us, in determining the national importance of the endeavor, to consider only the potential prospective

impact of the Petitioner's research on developing thermal performance models and thermal management designs for electronic cooling in data centers, and not to consider that the Petitioner intends to pursue this endeavor as a technical project manager. But the potential prospective impact of a research-based endeavor may be affected by whether the results of that research will be disseminated through the field such as with academic journals and conference presentations, or whether they will remain as part of a company's private research and development. The record here does not provide sufficient detail about how the Petitioner's research, completed through this prospective employment, has the potential to have a broad impact that reaches beyond the Petitioner's prospective employer. We also note that the Petitioner does not sufficiently explain why he specifically seeks the position of a "technical project manager," or the duties of this position as the Petitioner understands them, to demonstrate that how much of this position would involve pursuing research, rather than a position that would primarily involve managing or executing a company's specific projects. We agree that endeavors related to "certain improved manufacturing processes" may rise to the level of national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. Additionally, we acknowledge that such endeavors could be pursued through industry-based research and development. But the burden is on the Petitioner to demonstrate that the potential prospective impact of the endeavor, pursued through this avenue, rises to the level of national importance. In this case, we conclude that the specific way in which the Petitioner intends to implement the proposed endeavor is material to assess its potential prospective impact, and that the record lacks sufficient detail to show that it rises to the level of national importance.

The Petitioner's claims on appeal do not overcome the basis for the Director's findings as they relate to the national importance of the proposed endeavor. Moreover, upon de novo review, we agree that the Petitioner has not established the national importance of the proposed endeavor. Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* framework, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our opinion regarding his eligibility under the second and thirds *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant is otherwise ineligible).

The Petitioner has not met the national importance requirement of the first prong of *Dhanasar*. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.