U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33698837

Date: SEP. 25, 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 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 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.

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 for the underlying EB-2 immigrant classification as an advanced degree professional. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

The Director concluded, without discussion, that the Petitioner's prospective work in the United States has both substantial merit and national importance under *Dhanasar's* first prong. The Director also determined that because the Petitioner did not provide a detailed explanation of his proposed endeavor, nor explain how he planned to execute it, they could not conclude he was well-positioned to advance it. Finally, the Director determined the Petitioner did not establish that, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus a labor certification.

On appeal, the Petitioner asserts that the Director erred in concluding that his endeavor is both not sufficiently described and is substantially meritorious and of national importance because, without a clearly defined proposed endeavor, it would be impossible to determine that it meets the first prong of the *Dhanasar* analysis. We agree. A petitioner must identify "the specific endeavor that [he] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889; *see generally* 6 USCIS Policy Manual F.5(D)(1) ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.") And we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well-positioned to advance it. Therefore, for the reasons discussed below, we withdraw the Director's determination that the Petitioner has met the first prong of the *Dhanasar* analysis.

A. The Proposed Endeavor

The record reflects that the Petitioner is an experienced systems engineer who has worked in varying positions in the aviation and aerospace industries, including as a product development engineer, control system design engineer, test control engineer, and most recently as a flight test control system team lead with his current U.S. employer, [redacted]. In these roles, he has been involved with determining requirements for flight control systems, certifying flight test campaigns of various

[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).

aircrafts, and working with a team responsible for the design and certification of commercial engines, which were the commercial predecessor to the engines being used to upgrade U.S. Air Force long-range missiles.

The Petitioner initially stated that his proposed endeavor was to "advance [his] career as an aerospace professional, in the control systems design and testing areas," and that, due to his background, he would be able to "serve in a variety of roles," like systems engineer (aviation); design engineer (aviation); flight test control systems engineer; and aerospace software engineer. He provided a summary of the various duties he could perform in these positions, which included the design, development, and maintenance of aircraft systems, and the development and certifying of aircraft and related systems. Ultimately, he claimed that his "expertise and knowledge in control system design, and computer and software engineering are critical to the success of the [aerospace] sector in the United States," and that he "can help the industry continue to innovate and stay ahead of its competition, contributing to the country's economic growth and technological advancements." Moreover, he averred that his endeavor is of national importance due to the "services it provides to U.S. companies, the U.S. technology chain, and the aerospace sector." He also indicated in his first professional plan that, while he planned to remain with his U.S. employer "until June 2024," he would then either "continue [his] employment with this company, or transfer [his] skillset to any other company in the area."

In response to the Director's request for evidence (RFE), the Petitioner submitted a new professional plan stating that his proposed endeavor is "to engage in the advancement and innovation of the U.S. [a]erospace [i]ndustry," which he planned to accomplish by "applying [his] knowledge and skills as a [c]ontrol [s]ystem [e]ngineer toward the research, design and development of aviation and aerospace technology. . ." In his updated professional plan, he stated that he intended to continue to work for his U.S. employer in the control systems engineering discipline and provided detailed information relating to his past projects asserting that these established the clear national importance of his work. Additionally, the Petitioner referenced his initial professional plan that detailed the various positions he could hold in the industry.

In addition to his two professional plans, the record contains two expert opinion letters, multiple letters of recommendation from his current and former colleagues commending his work on complex projects supporting the functional design of control systems and successful flight test campaigns, and copies of previous letters of support submitted in support of his L-1 visa applications. Additionally, the Petitioner submitted several industry articles and reports on various topics including technology advancements within the U.S. Air Force, aerospace and defense industries and their impact to the U.S. economy, as well as various government publications detailing federal priorities surrounding the aeronautics field. He also submitted inquiries he received on LinkedIn from recruiters hiring for various positions in the aerospace field.[2]

On appeal, the Petitioner asserts that his endeavor was "described in painstaking, minute detail." As examples, he points to his statements indicating that he intended to engage in advancement and innovation in his field and participate in the research, design, and development of technology. Yet,

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

beyond relying on his past work with his U.S. employer, he does not identify which specific technology he intended to research, design, and develop. And, while he claims that his work is like the petitioner in *Dhanasar* because it also involves working with propulsion systems, it was not Dr. Dhanasar's occupation or field alone that established the national importance of his endeavor, but rather his specific plans to continue his research, which was explained in detail in the record. In contrast, while we acknowledge the Petitioner's claims that his knowledge would allow him to work in various engineering positions within the aerospace and aviation fields, he has not consistently detailed exactly *what* his specific proposed endeavor would be, beyond working in a control systems discipline.

The Petitioner initially indicated that he planned to continue to work with his U.S. employer through June 2024, but he also indicated that he may accept new positions and work in varying positions in the field. Then, in response to the Director's RFE, the Petitioner indicated that he intended to continue to work for his current U.S. employer "in the [c]ontrols [s]ystem [e]ngineering discipline," but he also submitted inquiries he received on LinkedIn for various positions in the aerospace field, along with his replies which indicated his intent to stay with his employer only for the remainder of the year. Moreover, the Petitioner repeatedly references the letters of support prepared for his L-1 visa applications as evidence of the nature of his work, and its national importance, yet the letters indicate that he is primarily managing a team and providing some technical design and testing work. The letters do not indicate that the Petitioner is currently involved in the research, design, or development of new technology, but rather responsible for helping with the design of engine control systems and related flight-testing designs for his current employer. Likewise, while the Petitioner relies on the importance of his employer's redesign of the U.S. Air Force B-52 engines, the letters from his employer do not indicate that he will be working on this project.[3]

And while the Petitioner has provided extensive detail into projects he has already participated in, and the importance of his work to his current and former employers' development of highly technical aircrafts, he has not identified what specific work he intends to pursue, but rather points to various positions he could hold. The limited information and ultimate "goals" provided in support of the Petitioner's endeavor are not sufficient to establish his proposed endeavor.

For the above reasons, the Petitioner has not sufficiently established his specific proposed endeavor. As a result, we cannot conclude that he meets the first and second prongs of the *Dhanasar* analysis because we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well-positioned to advance it.

Nevertheless, we will provide additional analysis below.

B. 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

[3] We acknowledge that the letter from D-L- states that the Petitioner has served as a resource to the team working on this project to answer questions relating to the control systems used in the predecessor, but the record does not indicate he will otherwise work on this project.

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.

While we acknowledge that the record contains several industry articles and reports regarding the importance of the Petitioner's field in general, because the Petitioner has not sufficiently identified his specific endeavor, we cannot, for example, conclude that it would rise to the level of national importance contemplated in *Dhanasar.*

Moreover, even if were to assume the record established he would continue to work with his current employer in the control systems discipline, the Petitioner has also not consistently described his work to establish how it would rise to the level of national importance contemplated in *Dhanasar.* 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, as noted above, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* 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.

While the Petitioner relies on the past projects he completed for his employer relating to the aerospace industry, he has not explained how his work will result in broader implications to the aerospace field or that the technological advancements and broader implications resulting from his employer's operations would be directly attributable to his role within the company. The Petitioner cannot rely solely on the broader implications of his company's innovations within the industry, rather he must establish that the prospective impact of his work (his endeavor) rises to the level of national importance contemplated in *Dhanasar.* It is the Petitioner's burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376.

In addition, because the Petitioner has not explained what specific "technological advances" and "innovations" he intends to bring to the field, we are unable to determine whether his work would result in improvements to the field analogous to the "improved manufacturing processes or medical advances" contemplated in *Dhanasar. Dhanasar* at 889. As such, the record does not show that the benefits resulting from the Petitioner's work would have implications beyond the limited benefits to his prospective employer(s).[4]

Likewise, while the Petitioner claims that he has acquired specialized knowledge in the control systems engines used by his employer, he has not explained how this individualized specialized knowledge of his employer's operations is nationally important. The grant of an L-1 visa does not indicate that an individual's work is nationally important or otherwise merits waiving a job offer. In fact, the L-1 visa generally requires a specific job offer with the petitioning entity. Having specialized

[4] We note that 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.

knowledge of a company's tools and operations does not necessarily establish that an individual's work is in the national importance.

Additionally, the industry articles and reports regarding the collective importance of his field do not focus on the Petitioner's specific work. 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.

We have also reviewed the testimonial evidence in the record, including the two expert opinion letters and the letters of recommendation, but conclude that these also provide little probative value in establishing the nature of the Petitioner's endeavor or its national importance. For example, the expert opinion letter from Dr. U-S- focuses primarily on the Petitioner's background as well as the importance of the aerospace engineering field, and the collective importance of aerospace engineers and systems engineers. But Dr. U-S- does not explain how the Petitioner's specific work would broadly impact the field. Likewise, the expert opinion letter from Dr. A-J- discusses the possible engineering positions the Petitioner could hold, but primarily focuses on the importance of the field, rather than the broader implications of the Petitioner's specific work. 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. Although the record discusses the economic impact of the field, the Petitioner has not shown his specific work would result in substantial economic effects. While any basic economic activity has the potential to positively impact a local economy, the Petitioner has not provided projected employment numbers and revenue growth contributable to his specific endeavor to establish how his endeavor will result in substantial economic benefits discussed in *Dhanasar*. *Id.*

For all the reasons discussed, the Petitioner does not meet the first prong of the *Dhanasar* framework and we withdraw the Director's determination to the contrary.

C. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well-positioned to advance the proposed endeavor, we consider factors including, but not limited to their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

We agree with the Director's determination that, because the Petitioner has not provided a sufficient description regarding his specific proposed endeavor, we cannot conclude the Petitioner is well-positioned to advance it. The Petitioner's intention is material to determining whether, for example, he has provided a model or plan for his future activities and whether he has made progress toward achieving the proposed endeavor.

On appeal, the Petitioner contends that the Director disregarded significant evidence in the record detailing his prior experience in the industry, which has provided him the necessary knowledge to perform his proposed occupations. In particular, the Petitioner points to his involvement in key projects for his current U.S. employer and prior employers, which were documented in the letters of recommendation. And the Petitioner states that these projects establish his proposed endeavor, yet as stated, the evidence does not indicate the Petitioner will continue his involvement in the projects mentioned.

And the Petitioner's education, experience, skills, and knowledge in isolation are not necessarily sufficient to establish he is well-positioned to advance his proposed endeavor. The Petitioner should also establish a clear plan for how he will execute his endeavor. As stated, the Petitioner submitted inquiries from various recruiters on LinkedIn, but he has not clearly indicated his intent to pursue those roles. Moreover, even if the Petitioner had consistently indicated his intent to work with his U.S. employer, there is nothing in the record to establish his employer's interest in employing him beyond the completion of his L-1 visa.

Without more, we agree with the Director's conclusion that the Petitioner has not established he is well-positioned to advance his endeavor.

III. CONCLUSION

As the Petitioner has not met the first or second prongs 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 third prong. *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.