U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12307650

Date: JULY 14, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a software engineer, seeks second preference 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 EB-2 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 Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's 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.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of software engineering, the Director concluded that the record does not establish that the proposed endeavor has national importance. The Director also concluded the record did not satisfy the third *Dhanasar* prong, without addressing the second prong. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the endeavor as a plan to "advance his career as a [s]oftware [e]ngineer, developing software for companies, which are critical to their continuity and success." The Petitioner also described the endeavor with verbatim language from the Occupational Information Network (O*NET) summary report for "Software Developers," as follows:

- Modify existing software to correct errors, allow it to adapt to new hardware, or to improve its performance.
- Analyze user needs and software requirements to determine feasibility of design within time and cost constraints.
- Confer with systems analysts, engineers, programmers and others to design system[s] and to obtain information on project limitations and capabilities.
- Store, retrieve, and manipulate data for analysis of system capabilities and requirements.
- Design, develop and modify software systems, using scientific analysis and mathematical models to predict and measure outcome and consequences of design.
- Develop and direct software system testing and validation procedures, programming, and documentation.
- Supervise the work of programmers, technologists and technicians and other engineering and scientific personnel.
- Determine system performance standards.
- Coordinate software system installation and monitor equipment functioning to ensure specifications are met.
- Consult with customers about software system design and maintenance.
- Analyze information to determine, recommend, and plan computer specifications and layouts, and peripheral equipment modifications.[3]

The verbatim language from the O*NET summary report does not establish what the specific endeavor would entail, beyond matching the generalized tasks of positions in the same occupational category, nor does it establish how the proposed endeavor may have national importance.

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] *See* O*NET OnLine Summary Report for "15-1252.00 – Software Developers," http://www.onetonline.org/link/summary/15-1252.00 (last visited July 14, 2021).

The Petitioner further stated that his "experience and background is in an area of substantial merit and national importance for U.S. companies doing business or planning to do business in Brazil." In response to the Director's request for evidence, the Petitioner elaborated that his endeavor would entail:

> working in my field for companies that need my expertise as a [s]oftware [e]ngineer and [s]oftware [d]eveloper. Through my U.S. company, I would offer my specialized services as a software and systems development consultant to companies in many sectors, including investment and financial markets in the U.S. I would also be creating direct and indirect jobs. I plan to hire people that have knowledge in the software and systems development field within the U.S., so that together we can expand our services throughout the U.S. I am confident that I can assist many United States companies with the knowledge and expertise that I have gathered throughout my more than 29 years of professional experience.

In the decision, the Director concluded, "[w]hile the [P]etitioner's computer and software skills has [*sic*] substantial merit, the record does not establish that his work would impact the computer science industry more broadly, as opposed to being limited to clients where he serves."

On appeal, the Petitioner reiterates his general plan to "assist U.S. companies with the improvement of their software development practices in the areas of business and strategic planning, financial markets, and investment, contributing to the capital and investment opportunities in the United States," and notes his qualifications. The Petitioner also discusses software, and software development, in general. The Petitioner further opines that the United States "has an intrinsic national interest in making sure small businesses succeed" and that it "would be in the best interest of the United States to approve [the Petitioner's] petition based on the vitality to the global market." The Petitioner also asserts that the "endeavor is of significant national importance because it will result in national and local implications for small businesses," in general, without elaborating on how the endeavor would affect any particular business.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The proposed endeavor of software development benefits the client companies; however, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employers, as contemplated by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. For example, although the Petitioner repeatedly asserted he plans to hire an unspecified number of "people that have knowledge in the software and systems development field," the record does not establish whether the potential to employ U.S. workers is significant, and whether the potential positive

economic effects would be substantial. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361. Similarly, the record does not establish how the proposed endeavor of working as a software engineer for one or more companies rises to the level of broader implications within the field, as contemplated by *Dhanasar*. *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner's statements on appeal regarding his expertise and prior career accomplishments in Brazil address aspects of the second *Dhanasar* prong, they do not address how the proposed endeavor in the United States has broader implications beyond his immediate employer(s) and clients, as required by the first *Dhanasar* prong. *See id.* Moreover, the Petitioner's focus on appeal on the field of software development, businesses, and the "vitality to the global market" in general does not address aspects of the specific endeavor and how the performance of the planned activities under the endeavor would have broader implications, rising to the level of national importance as contemplated by *Dhanasar*. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.