U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17479597

Date: SEP. 13, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a telecommunications software consultant, 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 Nebraska Service Center denied the petition, concluding 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. On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. –
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> (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. . . . [T]he 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.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

Furthermore, 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 matter of discretion[2], 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

[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).

[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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) 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.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The Director also determined that the Petitioner had not sufficiently identified his proposed endeavor or that the endeavor, as described, meets the first prong set forth in the Dhanasar analytical framework. On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner provided the following information:

Part 5 - Additional Information About the Petitioner
Section 11. Occupation: Telecommunications Software Consultant

Part 6 - Basic Information About the Proposed Employment
Section 1. Job Title: Senior OSS/BSS Consultant[5]
Section 2. SOC Code: 15-1299[6]

[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] The Petitioner holds a foreign degree determined to be the equivalent of a U.S. bachelor's degree in computer science followed by at least five years of progressive experience in the specialty.
[5] The Petitioner has indicated "OSS" denotes "Operations Systems Support" and "BSS" denotes "Business Systems Support."
[6] The Department of Labor's Occupational Information Network classified the standard occupational classification (SOC) code of 15-1299 as "Computer Occupations, All Other." The Petitioner has not identified a more detailed occupation under this title. For more information, visit https://www.onetonline.org/link/summary/15-1299.00 (last visited Sep. 13, 2021).

Section 3. Nontechnical Job Description: Consultant for the design phase for analytics, cyber security, operations and business support systems in North America, Europe and Middle Eastern region for business to business and business to consumer segments.

According to the initial filing, the Petitioner currently works as a Senior OSS/BSS Consultant for [redacted] in Saudi Arabia. The petition contained significant detail concerning the Petitioner's past and current work, including that he has served '[redacted]' such as [redacted] and [redacted] In addition, his duties include "building and modifying software components, integrating and testing software interfaces, and configuring and modifying software systems and nodes." His current employer described him as a "professional subject matter expert" who "can help leverage the telecom software business that is directly influencing the upcoming Industrial Fourth Revolution," and that he has already shown "great success in accelerating the technological vision of G20 countries during the past years." The Petitioner's work achievements at [redacted] include the following verbatim key topics:

- Data Processing and Ingestion Platform;
- Catalog-driven Solutions for Service and Subscriptions Lifecycle Management Solutions;
- Digital Customer Experience Management Platform;
- Publishing the outcomes of Digital Transformation Journey for a tier 1 teleco [sic] provider; and
- Digital Customer Engagement Platform.

The Petitioner described his proposed endeavor in terms of the work he has already performed and presented evidence of this work through employment verification letters and his application to the Canadian Association of IT Professionals, among other pieces of evidence.[7] He stated that he is "adept at providing successful analytics, cyber security and OSS/BSS solutions for businesses" and that "by using his knowledge of telecommunications architecture and design," he "can help corporations improve operational efficiencies and bottom-line performance using technology." In addition, he claimed that he "can continue this level of success in aiding American companies and organization in achieving greater efficiencies and cost savings through more expert software development" and that his skills are applicable to a wide variety of industries across all states. The Petitioner further asserted that he "would help American businesses become more competitive in the global economy" by utilizing his skills at "designing and implementing software programs to improve service quality and operational excellence while decreasing the total cost of ownership." Although the record contains anecdotal examples of how the Petitioner has served his employers and clients, the Petitioner has not offered specific information concerning how he proposes to continue offering such services as part of his proposed endeavor.

The Director issued a request for evidence (RFE), which informed the Petitioner that his initial submission was insufficient to establish what specific endeavor he proposed to undertake and that the record lacked sufficient evidence to establish the substantial merit and national importance of the proposed endeavor. In his RFE response, the Petitioner did not provide a detailed description of his proposed endeavor, but instead stated that he would continue to serve as a "Telecommunications Software Consultant" as he has for the past twelve years. He asserted that he had already supplied a sufficient description of his endeavor

[7] While we do not discuss every piece of evidence, we have reviewed and considered each one.

through the submission of employment letters describing his job experience, salary statements, as well as evidence of job certifications, memberships, education, and specific past achievements in the field. He further clarified that working as a "Telecommunications Software Consultant" would be the only endeavor he will pursue in the United States.

In his RFE repsonse, the Petitioner also claimed that he gained further experience and training in the fields of 5G and cybersecurity. To support his claim, he submitted additional letters from telecommunications individuals familiar with his work as well as training certificates to evidence his continued advancement in these areas. However, the Petitioner's expertise acquired through his employment and training relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. By issuing an RFE, the Director sought to address a siginifcant evidentiary gap concerning whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong. The RFE response did not provide more specificity concerning the proposed endeavor. Rather, the Petitioner relied upon the information he already provided.[8]

The Director noted in the decision that, although the Petitioner identified that he would work as a telecommunications software consultant, he did not identify any specific endeavor. We agree. While his occupation may be described as a telecommunications software consultant or a Senior OSS/BSS Consultant, the Petitioner presented background information on a variety of different and distinct information technology (IT) occupations, including software developers, information systems managers, and software engineers. In addition, he described the skills required for IT managers and stated that he excels in the field of software development. While the record contains a conglomeration of evidence about the IT field, the first prong of Dhanasar considers the "specific endeavor which is the proposed work" and not the field overall. By presenting evidence related to various IT occupations, the Petitioner has not clearly demonstrated whether his proposed endeavor involves working as a consultant, developer, engineer, manager, architect, or some combination of these. In addition, not all activities within a particular occupation or proposed endeavor will necessarily meet the substantial merit and national importance standard.[9] As such, the Petitioner bears the burden of identifying his specific endeavor so that USCIS may properly evaluate whether it has substantial merit and national importance.

Although the Petitioner argues on appeal that he has "explicitly identified his endeavor, i.e. telecommunications software architecture," and that he will pursue employment as an expert in 5G and cybersecurity, the record contains insufficient information concerning his proposed endeavor. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Simply stating that he intends to continue being an expert in his field does not explain how he intends to maintain that expertise, nor does claiming that he will continue working in a particular occupation adequately identify how he intends for this to occur. He has not, for example, identified whether he intends to continue working with his current employer, whether he will pursue another job in the United States, or whether he will serve as an independent contractor. Further, it appears equally likely that the Petitioner could pursue self-employment in the stated field.

[8] Although we have reviewed the articles concerning the importance of telecommunications, 5G, and cybersecurity, as well as all of the letters from his employers and others in the field, this evidence is of limited value as it does not address the Petitioner's specific proposed endeavor.

[9] 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.

To further illustrate, we do not know if the Petitioner has any job offers in the United States, if he intends to work for certain employers, or if he will contract with specific clients.

The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to the nation. As such, the Petitioner must identify how he proposes to continue working as telecommunications software consultant such that we may determine whether the proposed endeavor has substantial merit and national importance. Without sufficient information concerning the endeavor, no determination of its merit or importance can be made. Finally, given that many IT positions may be performed remotely, identifying the specific proposed endeavor is important in order to adequately explain how continuing as a telecommunications software consultant in the United States differs from the work the Petitioner already performs overseas. If the Petitioner will simply "continue his endeavor" and the work he has performed overseas for the past twelve years, this hardly explains how the endeavor would benefit the United States or would need to be performed from within the United States.

Although counsel repeatedly emphasizes that the Petitioner has submitted over 500 pages of evidence, eligibility for the benefit sought is not determined by the quantity of evidence alone but also by the quality. Chawathe, 25 I&N Dec. at 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). It is always the Petitioner's responsibility to ensure that the record demonstrates how he qualifies for a national interest waiver. Section 291 of the Act, 8 U.S.C. § 1361. In determining whether an individual qualifies for a national interest waiver, 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 under the Dhanasar analysis. Because the Petitioner has not provided sufficient information regarding his proposed endeavor, we cannot conclude that he meets either the first or second prong, or that he has established eligibility for a national interest waiver.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.