U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29340186

Date: JAN. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology (IT) network and cybersecurity engineer, 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 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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 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. Section 203(b)(2)(B)(i) of the Act. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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;

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

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director's decision did not render a determination as to whether the Petitioner qualifies as a member of the professions holding an advanced degree. Instead, the decision only addressed the Petitioner's eligibility for a national interest waiver. Therefore, the issue for consideration on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[2]

With respect to his proposed endeavor, the Petitioner indicated that he intends to continue working as an IT professional specializing in network and cybersecurity engineering. He asserted that he "will strive to guarantee and protect the integrity and regular operation of networks and data stores, along with securing companies and individuals against cyber threats." In addition, the Petitioner stated that his "proposed endeavor in the United States is to offer my expertise by sharing knowledge that will benefit U.S. companies looking to protect their data, systems and technologies . . . . [M]y work will ensure that companies' necessary confidentiality, integrity, availability and privacy are secured."

The record includes occupational information about information security analysts, software quality assurance analysts and testers, computer and information research scientists and systems managers, data scientists, and information security engineers. Additionally, the Petitioner provided articles discussing the U.S. wireless services industry, the 5G economy, cybersecurity challenges, economic value from the wireless industry, the effect of COVID-19 on cybersecurity, the Trump Administration's cybersecurity strategy and national security strategic guidance, and Biden Administration actions to attract STEM talent and strengthen our country's economy and competitiveness. He also submitted information about America's 5G future, critical and emerging technologies, U.S. national security priorities, IT worker shortages, employment multipliers for the U.S. economy, and Biden Administration priorities regarding research and development funding. Here, the Director concluded that the submitted documentation demonstrates the proposed endeavor's substantial merit. In determining national importance, however, the relevant question is not the general importance of the industry or occupation 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. The Petitioner must still establish the potential prospective impact of his specific proposed endeavor.

Furthermore, the Petitioner offered letters of support from C-M-, C-L-R-, F-P-B-, L-F-A-F-, J-M-, and L-T-A- discussing his IT capabilities and experience. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar's* first prong.

[2] Because the Petitioner has not demonstrated his eligibility for a national interest waiver on appeal, we need not remand the decision for the Director to determine whether he qualifies for the underlying EB-2 visa classification.

The Petitioner also submitted an "Expert Opinion Letter" from Dr. A-A-, Adjunct Professor of Mathematics at [redacted] in support of his national interest waiver. Dr. A-A- contends that the Petitioner's proposed work is of national importance because the generic occupation network engineer and the wireless telecommunications industry stand to contribute to our nation's economy, enhance societal welfare, and advance White House initiatives. The issue here, however, is not the national importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. While the advisory opinion cites to publicly available information from the White House and the Federal Communications Commission to establish the overall importance of promoting STEM talent and bringing broadband to rural areas, it does not demonstrate how performing day-to-day network and cybersecurity engineering services for U.S. companies as contemplated by the Petitioner's proposed endeavor rises to a level of national importance. The letter from Dr. A-A- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his field or substantial positive economic effects for our nation that rise to the level of national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated that his undertaking "stands to sufficiently extend beyond an organization and its clients to impact the industry more broadly." The Director also indicated that the Petitioner had not shown that his proposed work "has significant potential to employ U.S. workers" or offers "substantial positive economic effects" for our nation.

On appeal, the Petitioner points to USCIS policy guidance relating to persons with advanced degrees in STEM fields.[3] He contends that his "proposed endeavor substantially develops and promotes some technologies recognized by the U.S. National Science and Technology Council (NSTC) as being critical and emerging." The Petitioner argues that his undertaking "aimed at increasing the national cybersecurity and maintaining 5G technology in the country, must be classified as related to critical and emerging technology, as his work falls within the Communication and Networking Technologies field according to the NSTC's Critical and Emerging Technologies List Update, which includes, among others, next-generation wireless networks, including 5G and 6G, and communications and network security." He also mentions U.S. government policies and initiatives relating to cybersecurity and STEM education.

In determining national importance, the relevant question is not the importance of the field, 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

[3] "USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security." *See* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual.

economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. We recognize the overall value of the IT industry, attracting STEM talent, and strengthening our nation's cybersecurity and wireless network infrastructure. However, as the Director noted, the evidence does not demonstrate that the Petitioner's specific undertaking stands to have an impact beyond the organization and clients he would serve, or that his proposed work would otherwise have broader implications for the IT industry or U.S. cybersecurity initiatives. For example, he does not claim, and the record does not establish, that he plans to introduce novel technologies or IT advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulate how he will contribute to development of our nation's cybersecurity technologies or next-generation wireless networks.

Further, while the Petitioner asserts that his undertaking "impacts directly a matter that a government entity has described as having national importance or is the subject of national initiatives," he has not offered sufficient information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. 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, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his future U.S. employer or its clientele to impact the cybersecurity field, the IT industry, or the U.S. economy more broadly at a level commensurate with national importance.

Moreover, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the Petitioner has not shown that the benefits to the regional or national economy resulting from his projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, 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 the appellate arguments regarding his eligibility under the third prong outlined in *Dhanasar*. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong 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. 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.