U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27521067

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

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. The matter is now before us on appeal. 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 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.

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). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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 noncitizen 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a plan "to contribute my expertise as a [s]olution [a]rchitect to highly complex projects." Although the Petitioner did not specify the type of solution he proposes to architect or for whom, he clarified that a solution architect is a synonym for a computer software developer. The Petitioner also paraphrased information from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), submitted in support of the petition: "software developers create computer applications that allow users to complete specific tasks, as well as the underlying systems that allow devices to operate and control networks."[1] The Petitioner also stated that his proposed endeavor "can make a huge contribution to the development of this sector of the economy both within one company and for the United States as a whole," although he did not elaborate on what the proposed endeavor would contribute, how it would do so, the consequences of the contribution, and other such details about the proposed endeavor.

In response to the Director's request for evidence (RFE), the Petitioner described the proposed endeavor as a plan "to work as an IT [s]pecialist/[s]olution [a]rchitect and develop the field." However, similar to his initial description of the proposed endeavor, he did not elaborate on the type of solution he proposes to architect or for whom. Instead, the Petitioner asserted that the proposed endeavor has national importance because the National Science and Technology Council included the generalized field of "advanced computing into the Critical and Emerging Technologies List that are of particular importance to the national security of the United States." The Petitioner also referenced publications regarding the general information technology industry that "suggest that while the demand for technology remained high in 2022, and will likely continue to be elevated in 2023, skilled IT workers will be hard to find and difficult to keep."

The Director found that the record "does not articulate the [Petitioner's] particular plan for working as a solution architect or software developer at a level commensurate with national importance." The

[1] The *Handbook* is an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The information in the record from the *Handbook* states, in relevant part, "Software developers create the computer applications that allow users to do specific tasks and the underlying systems that run the devices or control networks."

Director observed that the Petitioner's statements regarding his proposed endeavor are "vague with respect to his actual employment plans in the United States. For example, the evidence does not indicate whether the [Petitioner] intends to work for a U.S. company or be self-employed." The Director acknowledged, however, that the record contains an undated job offer letter to the Petitioner from [redacted] for the position of "IT specialist." The Director further observed that "the [P]etitioner failed to provide evidence to demonstrate the potential prospective impact of [his] particular proposed endeavor." The Director also acknowledged generalized publications in the record but observed that they "are generic in nature and do not reference the [Petitioner], his prospective employer, or the proposed endeavor." Considering the record in its entirety, the Director concluded that the Petitioner did not establish the proposed endeavor has national importance. The Director further concluded that the record satisfies the second *Dhanasar* prong but not the third. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

On appeal, the Petitioner asserts that "[t]he nine-page document included with [the Petitioner's] I-140 exhaustively describes [his] proposed endeavor, which is the work as a IT Specialist and Computer System Architect within the United States, improving the stability and security of US computer systems [sic]." The Petitioner also references information submitted in response to the Director's RFE that "attest[] to the urgent demand for these kinds of services." The Petitioner further asserts that his proposed endeavor "will help make the digital infrastructure of the United States more secure, which will have an economic impact much broader than can be measured in terms of job creation." The Petitioner also asserts that the Director "erred in failing to give due weight to [the Petitioner's] degree and expertise in a STEM and CET field," again referencing the National Science and Technology information addressed in the RFE response.

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 [noncitizen] 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.

We first note that the Petitioner's assertion that the Director "erred in failing to give due weight to [the Petitioner's] degree and expertise in a STEM and CET field," particularly as applied to the first *Dhanasar* prong, is misplaced. "With respect to the first [*Dhanasar*] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *See* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. A STEM endeavor that is not indicative of an impact in the particular field of STEM more broadly would not establish its national importance. *See id.* Specifically, a computer software developer—or a synonymous "solution architect"—endeavor that is not indicative of an impact in the field of computer software development more broadly would not establish its national importance. *See id.* Therefore, whether the proposed endeavor is in a STEM field or is listed on the DHS STEM Designated Degree Program List are not dispositive—the Petitioner must still establish that the proposed endeavor would have an impact in the field of STEM more broadly or 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." *See id.*; *see also Dhanasar*, 26 I&N Dec. at 889-90. Moreover, the Petitioner's reliance on his academic history as applied to the first *Dhanasar* prong is misplaced because academic history is material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—but it is immaterial to the first prong—whether the specific proposed endeavor will have national or even global implications within a particular field, or broader implications, such as substantial positive economic effects. *See id.* at 888-91.

Next, contrary to the Petitioner's assertions on appeal, neither the initial filing nor the RFE response "exhaustively describes [the Petitioner's] proposed endeavor." Rather, as discussed above, the nine-page document the Petitioner references on appeal paraphrases generalized information from the *Handbook* about what workers in the computer software developer occupational category do, it discusses generalized articles about the software development industry, and it summarizes the Petitioner's prior academic history and experience. Although the Petitioner stated in the referenced nine-page document that his proposed endeavor "can make a huge contribution to the development of this sector of the economy both within one company and for the United States as a whole," he did not elaborate on what the proposed endeavor would contribute, how it would do so, the consequences of the contribution, and other such details about the proposed endeavor and its potential for broader implications or substantial positive economic effects. *See id.* at 889-90. Likewise, the Petitioner's RFE response did not provide details about his proposed endeavor, generally stating instead that he intends to "develop the field." The Director's observation that the Petitioner's statements regarding his proposed endeavor are "vague with respect to his actual employment plans in the United States" is accurate. Although the record contains an undated employment offer letter, noted by the Director, the Petitioner did not state prior to the decision or on appeal that his proposed endeavor would entail working for that employer, being self-employed, or working for any other particular employer. Without more information regarding what software the Petitioner would develop and for whom he would develop it, the record does not establish that the proposed endeavor will have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" or broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* Thus, the record does not establish the proposed endeavor has national importance.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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). Furthermore, we reserve our opinion regarding whether the record contains sufficient information to support the Director's conclusion that the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See id.*

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.