U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29226372

Date: JAN. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software developer and inventor of color management technology, 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 immigrant 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 he 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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:

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

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 waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner's proposed employment is "developing new color management programs and technology" as a chief technology officer at [redacted], a company owned by his wife, Mrs. [redacted], and its German parent company, [redacted]. The Petitioner's resume shows that he has worked at [redacted], for most of his career, starting out as a software developer in 1993, then becoming a senior research manager in 1999 and a technical director of color management software in 2002. In 2012, the Petitioner began working as the chief technology officer at [redacted]

The Director issued a notice of intent to deny (NOID) and then denied the petition, concluding that the Petitioner's endeavor has substantial merit but not national importance under the first prong of the *Dhanasar*'s analytical framework.[2] 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. *Dhanasar*, 26 I&N Dec. at 889. As the Director has found substantial merit in the Petitioner's proposed endeavor, we will only focus our analysis on the endeavor's national importance element.

On appeal, the Petitioner contends that the Director "did not consider all presented evidence." Specifically, the Petitioner claims that the Director failed to consider reference letters from "large, nationally, and internationally operating companies, which all stated the significant economical impact of the petitioner's endeavor" and relied only on the size and employability of the Petitioner's current employer, [redacted]

The Director's analysis largely concentrated on the articles and industry reports submitted by the Petitioner regarding the importance of the industry and the economic impact from the Petitioner's current employer, [redacted]. Although the Director mentioned the reference letters by stating that "some of the letters reference [the Petitioner's] contribution to the petitioning [company] and the relationship it has with other companies," the denial letter did not fully explain how the reference letters from presidents and CEOs of companies that operate in the field of printing and color management software support the national importance of his proposed endeavor.

[2] The Director further concluded that the Petitioner is well-positioned to advance his proposed endeavor under the second prong, but the evidence does not support that his endeavor, on the balance, would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, under the third prong.

Generally, reference letters demonstrating that the Petitioner successfully performed past projects or that he received recognition for his work relates to the second prong of the *Dhanasar* framework, whether he is well-positioned to advance his proposed endeavor. *Id.* at 890. However, *Dhanasar* states that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* Accordingly, we examined the entire record, including updated reference letters submitted on appeal, for any evidence that the Petitioner's research, inventions, or processes has national or global implications within the color printing software industry.

Upon de novo review, we agree with the Director's ultimate conclusion that the Petitioner's endeavor does not rise to the national importance as contemplated by *Dhanasar,* as discussed below.

The reference letters overall attest to the partnerships and utilization of the technology and products developed by [redacted] and [redacted], for which the Petitioner has worked as a software developer and technical expert. We acknowledge that the Petitioner's endeavor to work for [redacted] as the chief technical engineer will enrich and enhance the company's product lines and technologies associated with color management software and impact other companies in the industry that partner with [redacted]. However, the record does not corroborate the claims made in these reference letters regarding the prospective impact of his proposed endeavor rising to the level of national importance.

For example, the letter from [redacted], Director of Solutions Development and Strategic Escalation of [redacted] states that the Petitioner's color management technology such as [redacted] have been "importance components of our company's products, and to the color management industry overall and he is well-known in the industry." However, the author does not address the Petitioner's specific role in inventing such technology, or how such technology is important to the field overall.

Similarly, the letter from [redacted] states that "our products rely heavily on the color management solutions which have been developed by [the Petitioner] and his companies, [redacted]' and the Petitioner's "algorithms for color management are widely regarded as the highest quality in the industry." But the author does not provide details concerning how the Petitioner's algorithms are new or unique in a way that it rises to the level of national importance in the industry.

Furthermore, [redacted], stated that the Petitioner "is the inventor of the technology provided by [redacted]' and "[h]is inventions are essential for the printing industry worldwide and are used in a variety of products not only developed by [redacted] but also by several other vendors in the industry overall." Yet, the record contains little indication that other industry professionals have adopted the Petitioner's techniques or methodology.

Apart from the assertions made in these reference letters, we have little concrete evidence of how the Petitioner's endeavor constitutes major contributions to the industry. Generalized and conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory

assertions in immigration benefits adjudications). The authors of these reference letters do not give specific examples as to how the Petitioner's work has influenced the field and the evidence on record does not sufficiently support the claims made in the letters.

The Petitioner submitted patents and patent applications for various electronic processing of color metrics and color management, both in the United States and Europe. Theses documents indicate that the Petitioner is one of the inventors who developed the color imaging technology. However, the evidence does not clarify how the Petitioner's design extended beyond his employer to affect the field as a whole. We understand that the Petitioner's employer, [redacted] supplies other companies in printing industry with the patented design and technology and partners in mutually beneficial ways with other companies, but the business activity generated by the patented technology appears to primarily benefit the Petitioner's employer and its direct partners and clients. The Petitioner has not sufficiently demonstrated how his patented technology is available to the industry as a whole or influences the field more broadly.

The record also contains evidence of awards granted to [redacted], the German parent company of [redacted], such as the 2017 Center for Technology and Research award for its [redacted]; the 2018 EU Business award for [redacted] and the 2021 Printing United Alliance award for [redacted] These awards indicate that the Petitioner's employer benefited from his software development and inventions in the past, but they do not substantiate that the Petitioner's specific proposed endeavor or methods will influence and impact the printing and color industry, other than just his employer and its customers, rising to the level of national importance.

Furthermore, 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. *Id.* at 890. On appeal, the Petitioner claims that substantial economic impact comes from his employer's engagement with various companies in the industry, such as [redacted], "a fortune 500 company with over 600 billion in annual revenues and almost 80,000 employees" (quotations omitted); [redacted], a company that has "grown more than 50% in the last 3 years" and "employ more than 55 people in the United States in four locations"; and [redacted], "the number one software solution in the world for sign making, digital printing and CNC machining industries" with "annual sales over $25 million and currently 38 employees in the United States."

However, the Petitioner's claims are unpersuasive. In *Dhanasar*, we focus on the impact of the petitioner's specific proposed endeavor. *Id.* at 890. We find that the record does not provide sufficient details regarding any projected U.S. economic impact or job creation specifically attributable to the Petitioner's future work. We acknowledge that the Petitioner's employer has engaged in business activities with its conglomerate partners and customers with high revenues and many employees. While any basic economic activity has the potential to positively impact the economy, we find the endeavor's prospective impact too attenuated to be considered a "substantial positive economic effect" as contemplated by *Dhanasar*. *Id.*

Considering the record in its entirety, we conclude that the Petitioner does not adequately describe or demonstrate how his future software development work stands to rise to the level of having national importance within the color management technology field. The record does not show that the specific

work the Petitioner proposes to undertake will offer original innovations to advance the industry, or that it otherwise has wider implications in his field. As discussed, the evidence did not sufficiently articulate how his particular proposed endeavor would have national importance beyond his current employer and its clients.

Based on the foregoing, we find that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Therefore, we decline to reach and hereby reserve the Petitioner's arguments regarding his eligibility under the second and third prongs. *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.

ORDER: The appeal is dismissed.