U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 27274802

Date: JUL. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software quality assurance engineer, seeks classification as an individual of exceptional ability. 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. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement is 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, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[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 proposed endeavor has both substantial merit and national importance;
- 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 Petitioner obtained a bachelor of engineering degree in automation from the University [redacted] China in 2015. The Petitioner submitted a credential evaluation which states that the degree is equivalent to a U.S. bachelor's degree in electronics engineering. The Petitioner also provided evidence of work experience in automation and software quality assurance.[2]

The Director did not make clear findings as to whether the Petitioner qualifies for the underlying EB-2 immigrant classification or whether the Petitioner established that the proposed endeavor has substantial merit.[3] The Director concluded that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest because he did not demonstrate the national importance element of the first prong, or the second or third prongs of the *Dhanasar* analytical framework. Because, as we discuss below, we conclude that the Petitioner has not established the national importance of his proposed endeavor, we need not reach the question of whether he has established eligibility for the EB-2 immigrant classification, the substantial merit of his endeavor, or the second or third prongs of the *Dhanasar* framework, and we reserve our opinion regarding those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

As to the Petitioner's proposed endeavor, the Petitioner initially provided only the general statement that he is "planning to use my work experience and knowledge in the field of IT [information technology] to continue my work as a Programmer Analyst and help improve healthcare." The Petitioner also provided evidence that he has created a website, [redacted] to provide software engineering consulting services, although the Petitioner did not clarify whether the proposed endeavor was to operate this website as a business. In response to a request for evidence (RFE), the Petitioner submitted a business plan, which stated that the proposed endeavor is to work as a software quality assurance engineer with a focus on the healthcare industry, either by providing consulting services or by finding employment in the United States. The business plan does not mention the Petitioner's website or provide another specific proposed venture within this field. The business plan also does not provide information related to funding, financial projections, or potential job creation. The Petitioner also submitted an employment letter confirming that the Petitioner is employed at an IT services company full-time in software quality assurance. The RFE response did not provide further details as to the proposed endeavor, or otherwise clarify whether the Petitioner intends to remain in

[2] The Petitioner submitted evidence claiming that he has obtained approximately two and a half years of work experience in automation and had obtained approximately one year of work experience in software quality assurance prior to filing the I-140 petition. The Petitioner did not submit evidence of at least five years of post-baccalaureate progressive experience in the specialty prior to filing the petition.

[3] The Director concluded that the Petitioner does not qualify as an advanced degree professional. However, the decision's discussion as to the Petitioner's qualification as an individual of exceptional ability is incomplete.

his current employment, to further develop his website, or to provide consulting services in his endeavor.

As stated above, the Director concluded that the Petitioner did not establish the national importance of the proposed endeavor. The Director noted that the Petitioner did not clearly establish whether he intends to pursue an entrepreneurial venture to provide consulting services, or whether he intends to seek employment with a company as a software quality assurance engineer. The Director found that regardless of whether he intends to be an entrepreneur or to work as an employee, the Petitioner did not show that his proposed endeavor to work in the IT field stands to sufficiently extend beyond either his employer or his company to impact the field more broadly at a level commensurate with national importance. The Director further found that the Petitioner did not submit sufficient evidence to establish that his proposed endeavor may result in significant job creation or other substantial positive economic effects.

On appeal, the Petitioner submits a brief and an expert opinion letter stating that the Petitioner has established eligibility for a national interest waiver. In the brief submitted on appeal, counsel for the Petitioner discusses of the field of software quality assurance in general and provides information and statistics about the U.S. healthcare industry. However, the brief does not address the deficiencies that Director found as to the proposed endeavor's national importance, nor attempt to clarify further regarding the specifics of the endeavor. We note that in determining whether a proposed endeavor has 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 potential prospective impact of the "specific endeavor that the [noncitizen] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889.

Moreover, the brief does not identify any specific legal or factual errors in the Director's finding that the Petitioner did not establish national importance. Other than describing the general field, counsel merely restates the Petitioner's intention to work in software quality assurance and asserts that, because healthcare is a vital industry in the U.S. economy, this will result in "saving millions of dollars and even contributing to improved national security via the protection of citizens' sensitive data."

Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. Here, the evidence in the record does not support counsel's assertions. The Petitioner provided evidence of his educational credentials, work experience, and submitted a business plan which does not clearly articulate the specifics of the Petitioner's proposed endeavor and does not provide information related to funding, financial projections, or potential job creation. The business plan does not establish that the Petitioner's endeavor would result in "saving millions" or "contributing to improved national security."

The expert opinion letter submitted on appeal also does not establish the national importance of the proposed endeavor. In support of national importance, the letter writer provides substantively the same discussion of the Petitioner's background and description of the general field found elsewhere in the record. The writer also asserts that the endeavor has significant potential to employ U.S. workers because the IT field is projected to grow at a rate faster than the overall economy. It is true that an

endeavor that has significant potential to employ U.S. workers, particularly in an economically depressed area, may have national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. But the potential for job growth in the field does not, by itself, establish that the proposed endeavor has such potential. As stated above, in determining national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," rather than the industry or field. *See id.* Additionally, the writer asserts that the endeavor has national importance because the Petitioner works in a STEM (science, technology, engineering, and mathematics) and cybersecurity-related field. While USCIS recognizes the importance of progress in STEM fields with respect to national interest waivers, the evidence must demonstrate that the STEM-related endeavor has national importance, such as by advancing a STEM technology or area of research. *See generally* 6 *USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policy-manual. The Petitioner has not established the national importance of the proposed endeavor merely because it relates to a STEM field. Further, without clarification as to the Petitioner's specific endeavor, as noted by the Director in the denial and not properly addressed on appeal, we cannot fully assess the relevance of the letter.

The Petitioner has not identified any specific legal or factual errors in the Director's finding as to national importance, nor has the Petitioner overcome the Director's finding that the record does not establish the proposed endeavor's national importance. Upon de novo review, we agree that 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.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Petitioner's eligibility for EB-2 classification, the substantial merit of the proposed endeavor, and the second and third prongs of the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. at 25 (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework regarding national importance. We therefore conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.