U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28446744

Date: OCT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a telecommunications engineer, requests classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job offer - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if he demonstrates that a waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Petitioner qualified for the EB-2 category as a member of the professions holding an "advanced degree" and agreed that his proposed work has "substantial merit." But the Director ultimately concluded that the Petitioner did not warrant a national interest waiver. On appeal, the Petitioner contends that the Director applied an incorrect standard of proof and overlooked evidence that: his endeavor has "national importance;" he is "well-positioned" to advance it; and a waiver of the U.S.-worker protections would benefit the country.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not established the claimed national importance of his proposed venture. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as advanced degree professionals or as noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and obtain DOL certifications to permanently employ the noncitizens in the country. Section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. To adjudicate these waiver requests, we therefore established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The Petitioner, a Venezuelan native and citizen, attended university in his home country, earning a *titulo de ingenerio de telecomunicaciones*. He has since gained about 10 years of experience working in the telecommunications field. He seeks to continue working as a telecommunications engineer in the United States.

B. Advanced Degree Professional

The Petitioner submitted evidence that his Venezuelan university credential equates to a U.S. bachelor's degree in telecommunications engineering. He also documented his possession of at least five years of progressive, post-baccalaureate experience in the telecommunications field. We therefore agree with the Director that he has demonstrated his qualifications for the requested EB-2 immigrant visa category as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty").

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's proposed undertaking could improve U.S. telecommunications infrastructure and provide substantial economic and societal benefits. Thus, we also affirm the Director's finding that the Petitioner's venture has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An 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.* A nationally important venture may even focus

on only one geographic area of the United States. *Id.* at 889-90. "An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.*

The Director found insufficient evidence that the Petitioner's proposed endeavor would impact the United States beyond his employer and its clients. Similar to *Dhanasar*, where we found that teaching the subjects of science, technology, engineering, and mathematics (STEM) to university students would not affect the education field broadly enough to attain national importance, the Director found that the Petitioner did not show that his network engineering activities would significantly advance the telecommunications field or have national economic implications.

The Petitioner initially stated his intent to work for a U.S. uniform company as a network cloud engineer. But, in response to the Director's request for additional evidence, he stated that a U.S. digital engineering company would instead employ him as a fiber engineer.

On appeal, the Petitioner argues that his proposed endeavor has national importance based on his new job. He contests the Director's finding that, to the extent his new job materially differs from his prior position, USCIS cannot consider the new work because it represents a change in his endeavor or a new endeavor. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to establish eligibility "at the time of filing the benefit request"); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998) (barring a petitioner from making material changes to a petition after its filing). But we need not determine whether the Petitioner's endeavor has changed because, even based on his new job, the record does not establish his endeavor's national importance.

The Petitioner argues that the Director overlooked evidence of the endeavor's national importance in the Petitioner's statement. The Petitioner stated that he would design, develop, and implement fiber optic networks to meet national demand for high-speed, broadband Internet services. He said his designs would enable operators to estimate costs, identify savings opportunities, avoid network "downtime," and increase operators' returns on investment. The Petitioner thus contends that his work would contribute to the country's economic growth and competitiveness. By sharing technical expertise and best practices on the projects, he also argues that he would facilitate collaboration within industries, ensuring faster deployment of next-generation networks.

The Petitioner, however, has not provided sufficient evidence about the scope of his proposed work. As previously indicated, when assessing national importance, we must focus on the potential impact of the *particular*, proposed endeavor. *See Matter of Dhanasar*, 26 I&N Dec. at 889 ("The first prong, substantial merit and national importance, focuses on the *specific* endeavor that the foreign national proposes to undertake.") (emphasis added). We recognize that the field of telecommunications engineering makes important contributions to Internet capabilities, affecting U.S. economic growth and competitiveness. But the Petitioner has not demonstrated that the *specific* projects on which he would work have national implications in the telecommunications field or on the national economy. The Petitioner stated that his current project would benefit two national Internet service providers. But the record does not indicate whether the specific project affects services nationwide or regionally. Also, he does not provide information about the project's economic scope or any potential effect on an economically depressed area.

The Petitioner also contends that the Director disregarded portions of expert opinion letters from three U.S. university professors of electrical engineering, computer sciences, and cybersecurity and information technology. The professors state the following national implications of the Petitioner's work in his new job:

- Replacement of copper wires with fiber optic cables would increase the reliability and speed of U.S. Internet services.
- Internet improvements would prevent delays, shutdowns, and losses and, at a time when increasing numbers of Americans are working remotely from their homes, create new jobs.
- Network upgrades would expand U.S. Internet access and coverage.
- Government initiatives seek to rebuild U.S. infrastructure and increase Internet access.
- The ability of more U.S. residents to work from their homes reduces the country's carbon emissions.
- Telecommunications are increasingly important for the nation's safety, security, and education.

We recognize that the Petitioner's work would *contribute* to nationally important goals. But the professors' letters do not demonstrate that his *specific* endeavor has national implications. The letters focus on the telecommunications field rather than on the Petitioner's particular, proposed work. The professors' letters therefore do not establish the national importance of his proposed endeavor.

The Petitioner further contends that "USCIS has applied a stricter standard of proof when analyzing the 'national importance' of [his] proposed endeavor than that of a 'preponderance of the evidence.'"

The Petitioner, however, does not provide examples of the Director's purported stricter standard. The Director's decision cites the appropriate standard of proof, stating that "the petitioner did not submit relevant, probative, and credible evidence to establish by a preponderance of the evidence that he is eligible for the requested benefit." *See Matter of Chawathe*, 25 I&N Dec. at 375-76. The decision does not otherwise indicate that the Director applied a higher standard. The record therefore does not support the Petitioner's contention.

For the foregoing reasons, the Petitioner has not demonstrated that his proposed venture has national importance. We will therefore affirm the petition's denial.

Our determination regarding the endeavor's national importance resolves the appeal. We therefore decline to reach and hereby reserve the Petitioner's appellate arguments regarding his positioning to advance his proposed venture and the purported benefits of a waiver to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible for relief).

ORDER: The appeal is dismissed.