



**U.S. Citizenship
and Immigration
Services**

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

In Re: 29139681

Date: OCT. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of electronic data protection services, seeks to permanently employ the Beneficiary as a cybersecurity expert. The company requests his 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 a certification from the U.S. Department of Labor (DOL) - if the company demonstrates that the waiver would be "in the national interest." *Id.*

The Acting Director of the Texas Service Center denied the petition. The Director found the Beneficiary qualified for the requested immigrant visa category as a member of the professions holding an "advanced degree" or its equivalent. But the Director concluded that the Petitioner did not establish the merits of a national interest waiver. On appeal, the company contends that the Director abused her discretion by disregarding evidence.

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 the company did not establish that the Beneficiary's proposed U.S. employment has "national importance." We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate that beneficiaries qualify 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 to 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. Thus, to adjudicate these waiver requests, we have 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, beneficiaries may merit waivers of the job-offer/labor certification requirements if their petitioners 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 record shows that the Beneficiary, a Jamaican national and citizen, obtained a bachelor’s degree in computing and information technology in his home country. He has since gained about 16 years of employment experience in the cybersecurity field.

In 2019, the Beneficiary established the petitioning limited liability company in the United States.¹ The company seeks to employ him as a cybersecurity expert, stating that he would reduce cybersecurity threats to organizations by using “best-in-class” practices.

B. Advanced Degree Professional

The Petitioner submitted evidence that the Beneficiary’s bachelor’s degree equates to a U.S. baccalaureate in computer science. The record also documents his 16 years of post-baccalaureate, progressive experience in the cybersecurity field. *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”). We therefore affirm the Director’s finding that the Beneficiary qualifies for the requested EB-2 immigrant visa category as an advanced degree professional.

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 record indicates that the Beneficiary’s U.S. cybersecurity work could help: protect data and communications; maintain the nation’s economy and critical infrastructure; strengthen national defense; and ameliorate a national shortage of cybersecurity professionals. Thus, we also agree with the Director that the proposed venture has substantial merit.

¹ The record identifies the Beneficiary as the company’s co-owner.

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 Beneficiary’s proposed work would have national implications for the economy or the cybersecurity field. The Director states that “it appears that the prospective impact would be localized to prospective employers and customers in the local community.” The Director also found insufficient evidence that the Beneficiary’s activities would introduce innovations into the cybersecurity field.

On appeal, the Petitioner contends that the Director disregarded evidence of the proposed endeavor’s national importance. The company argues that the Beneficiary’s reduction of cybersecurity threats to its clients would affect a variety of areas, including: business; entrepreneurialism; science; technology; culture; health; and education. The company contends that cybersecurity threats - such as ransomware, which enables cybercriminals to encrypt computer files and charge owners’ money to decipher them - are a “global menace . . . that cannot be localized” and that the Beneficiary’s activities would thereby have national and global implications. The company also argues that his work would support U.S. government initiatives to protect the nation’s electronic data and communications.

We recognize that, because of the nature of electronic data, the Beneficiary’s cybersecurity work would protect clients’ information both nationally and internationally. But the company has not demonstrated that - collectively - these protection services would rise to the level of national importance. The Petitioner stated that, since its opening in 2019, it has received more than 200 contracts for cybersecurity services and that, by 2023, it expected its revenues to exceed \$4.4 million. But the company has not demonstrated that these business levels reflect a significant national economic impact or would benefit an economically depressed area. Also, the Petitioner has not established that the Beneficiary’s work would introduce innovations to the cybersecurity field.

The Petitioner correctly notes that the Beneficiary’s work would support U.S. government policy and initiatives, including fostering progress in STEM (science, technology, engineering, and mathematics) disciplines. *See generally* 6 *USCIS Policy Manual* F.(5)(D)(2), www.uscis.gov/policy-manual. STEM endeavors have substantial merit. But, to establish national importance, they must also have a broad impact. For example, in *Dhanasar*, we found that, despite its substantial merit, a proposal to teach STEM disciplines at a U.S. university lacked national importance because it would not impact the STEM education field “more broadly.” *Matter of Dhanasar*, 26 I&N Dec. at 893.

As in *Dhanasar*, the Beneficiary’s proposed cybersecurity work clearly has substantial merit. The Petitioner, however, has not demonstrated that the venture would have a broad enough impact on the

economy or the cybersecurity field to be considered nationally important. We will therefore affirm the petition's denial on this ground.

E. Labor Certification Application Form

Although not included among the denial grounds, the record shows that the petition lacks an application form for a labor certification. A petitioner requesting a national interest waiver "must submit" a labor certification application form, with the portion regarding a beneficiary's qualifications completed. 8 C.F.R. § 204.5(k)(4)(ii).

The Director's request for additional evidence (RFE) noted the evidentiary deficiency and asked the Petitioner to rectify it. In its RFE response, however, the company stated that it declined to provide the document "because it is in the 'national interest' to grant [the Beneficiary] a waiver of the 'labor certification' requirement."

But, despite the Petitioner's request for the labor certification waiver, the company's petition must still include the relevant portion of a labor certification application. *See* 8 C.F.R. § 204.5(k)(4)(ii). The absence of the regulatory required document warrants the petition's denial. *See also* 8 C.F.R. § 103.2(b)(14) ("Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.") Thus, in any future filings in this matter, the Petitioner must submit a labor certification application form with the portion regarding the Beneficiary's qualifications completed.

F. The Other Denial Grounds

Our affirmance of the petition's denial based on insufficient evidence of the proposed endeavor's national importance resolves this appeal. Thus, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's positioning to advance the endeavor and the purported benefits to the United States of waiving U.S.-worker protections in this matter. *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 did not otherwise qualify for relief).

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary's proposed U.S. work has national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.