



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 33864449

Date: SEP. 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, seeks second preference immigrant classification (EB-2) for the Beneficiary, a senior software engineer, as a member of the professions holding an advanced degree. 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 classification. See section 203(b)(2)(B)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate that the Beneficiary merits a discretionary waiver of the job offer requirement 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 beneficiary must first qualify 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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Once a petitioner demonstrates the beneficiary's eligibility or the underlying EB-2 classification, they must then establish that the beneficiary merits a discretionary waiver of the job offer requirement "in the national interest." 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. While neither the 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 matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

- The beneficiary’s proposed endeavor has both substantial merit and national importance;
- The beneficiary is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

The Director determined that the Beneficiary qualifies as a member of the professions holding an advanced degree. We agree with the Director’s determination.²

The remaining issue is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director found that while the Petitioner demonstrated the Beneficiary’s proposed endeavor has substantial merit, it did not establish the endeavor is of national importance, as required by the first prong of the Dhanasar analytical framework. The Director further found that the Petitioner did not establish that the Beneficiary is well-positioned to undertake the endeavor under *Dhanasar’s* second prong, or 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 under *Dhanasar’s* third prong. Upon de novo review, the Petitioner has not established that a waiver of the labor certification would be in the national interest.³

The Beneficiary is a senior software engineer working for the Petitioner, [REDACTED]
[REDACTED] The Petitioner describes [REDACTED]
[REDACTED] providing management, security, and intelligence products for customer organizations to engage with [REDACTED]
The Beneficiary’s proposed endeavor is to continue working for the Petitioner with responsibility for enhancing [REDACTED] services by leading projects with its [REDACTED] site reliability engineering team. The projects include customer-related incident reduction and detection to lower customers’ service outages; data analysis and reporting to upper management of past site issues to better assess live site issues; and expanding features available to [REDACTED] engineers handling on-call tickets from other software engineers running [REDACTED] customer organizations. The Petitioner stresses that [REDACTED] continued reliable functioning is absolutely essential to a plethora of national interests,” including the United States maintaining its critical emerging cloud technologies, economic competitiveness, and advancement of industries such as healthcare, construction, retail, information technology, education, hospitality, communications, and financial services.

¹ See *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

² To demonstrate the Beneficiary is an advanced degree professional, the Petitioner submitted the Beneficiary’s diploma, his academic transcript, an academic evaluation, and employment letters. The record shows that the Beneficiary holds the foreign equivalent of a U.S. bachelor’s degree followed by more than five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(3).

³ While we may not discuss every document submitted, we have reviewed and considered each one.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor a beneficiary 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. To evaluate whether the proposed endeavor satisfies the national importance requirement we focus on the specific endeavor that the foreign national proposes to undertake and look to evidence documenting its "potential prospective impact." *Id.*

The Director determined that the Beneficiary's proposed endeavor is of substantial merit. Upon a *de novo* review, we agree with the Director's determination.

Regarding the national importance of the proposed endeavor, the Director's decision acknowledged the importance of the field of software engineering and that [redacted] as a company benefits the nation. However, the Director determined that the Petitioner did not demonstrate the Beneficiary's specific proposed endeavor activities extend beyond the Petitioner to impact the field more broadly or has significant potential to employ U.S. workers or other substantial economic effects at a level commensurate with national importance.

On appeal, the Petitioner argues the Director erred in its review of the evidence by misstating facts and relying on these misstatements for erroneous conclusions of law. Specifically, the Petitioner claims that the Director misidentified the Beneficiary's endeavor by stating he proposes "to work as a [s]oftware [e]ngineer," which it claims ignores the detailed endeavor and the evidence supporting the national importance of the endeavor. The Petitioner stresses that letters from its executives detail the specific three projects to be carried out by the Beneficiary to secure the reliability of [redacted] as well as his "leading, critical, and indispensable role in advancing the endeavor." Because the Director did not reference the specific projects as set out in the recommendation letters, the Petitioner argues that the Director erroneously concluded that the proposed endeavor is not of national importance.

We disagree with the Petitioner's claims that the Director mischaracterized the Beneficiary's proposed endeavor and therefore did not properly analyze the evidence supporting the Petitioner's claims of national importance. In the petition and throughout statements supporting the petition, the Petitioner indicates that the Beneficiary will work as a software engineer and that his field of expertise is in software engineering. Moreover, contrary to the Petitioner's assertions, the Director specifically references the recommendation letters from the Petitioner's executives by quoting the letters to explain the Beneficiary's indicated role, knowledge, and experience with the projects. Although the Director does not explain in detail the three projects being undertaken by the Beneficiary, the Director quotes a portion of a letter from the Petitioner's executive explaining the Beneficiary's work with one specific project, the customer—reported incidents. In addition, the Director quotes a second executive's letter which explains that the Beneficiary's work would be with "key projects to enhance the reliability" of [redacted]. The Director points out that while the letters "discuss the [B]eneficiary's achievement and successes at [redacted] and how his work benefits [redacted] they do not show that his role as a software engineer with the Petitioner would extend beyond the Petitioner and its clients to impact the Beneficiary's field more broadly.

The Petitioner maintains that the executives' letters demonstrate how the Beneficiary's endeavor would advance the secure reliability of [redacted] a platform "thousands of American public and private organizations – including most Fortune 500 companies and numerous U.S. federal and state

government agencies – heavily rely upon every day in order to safely and successfully operate.” The Petitioner stresses that the Beneficiary’s software engineering expertise and his “unique [redacted] specific skills” make him irreplaceable “to support the endeavor’s continued timely advancement and long-term success.” Having worked with [redacted] since 2020, the Beneficiary’s [redacted] specific software engineering skillset makes him a rare expert who has become frankly irreplaceable to ensuring the platform’s continued, uninterrupted reliability, impacting thousands upon thousands of organizations, and tens or even hundreds of millions of American citizens daily.”

A letter from a principal software engineering manager with [redacted] explains the Beneficiary’s role in the three projects while stressing that the Beneficiary’s [redacted] experience, knowledge, and skills are invaluable for each project’s success. The letter points out that the Beneficiary has “made multiple significant innovations to the platform while demonstrating uncanny insight into how to continuously improve our front end services in order to best support our public and private client organizations.” However, the Petitioner has not provided evidence detailing the Beneficiary’s “significant innovations.” For instance, the letter explains that the project with data analysis for past live site issues involves analysis of past [redacted] customer issues so that engineers can relate new and prior incidents to help customers quickly resolve outages. The letter states that the Petitioner relies on the Beneficiary’s “unparalleled, experience-based, [redacted] specific knowledge, skills and leadership” to advance the project which is needed to protect the reliability of [redacted] for its client companies and organizations. In explaining the Beneficiary’s role for the other two projects, the letter similarly explains the Beneficiary’s role in identifying issues and leveraging his knowledge and skills to address the issues. A second letter from the Petitioner’s principal software engineering manager with [redacted] Machine Learning explains the Beneficiary’s software engineering knowledge and his contributions to enhancing the reliability and performance of [redacted] machine learning specialized tools.

Both letters attest to the Beneficiary’s technical knowledge and his work with specific [redacted] projects. However, the content of these letters mainly relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Beneficiary’s proposed endeavor. The letters attest to his technical competencies and professionalism which help the Petitioner and its [redacted] customers. They also describe the Beneficiary’s role for certain successful projects for the Petitioner. We acknowledge that the Beneficiary has provided valuable software engineering services for the Petitioner and its customers, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of the Beneficiary’s proposed endeavor rises to the level of national importance. The Petitioner’s statements characterize the Beneficiary’s work as valuable for maintaining the reliability of [redacted] however, they do not sufficiently detail how his endeavor would be different from work typically performed by software engineers. For instance, the Petitioner has not detailed or established his plans to introduce novel technologies or software engineering advancements that may be disseminated to or adopted by others operating in the field or industry, or otherwise articulated how he will contribute to development of our nation’s software engineering industry. Instead, the Petitioner emphasizes the Beneficiary leveraging his [redacted] experience and knowledge to positively impact its customers’ reliance and use of [redacted] Without further evidence, the Petitioner has not demonstrated his work as a software engineer for the Petitioner and its [redacted] platform has the potential to impact his field more broadly rising to the level of national importance.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. We explained 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. at 889. Here, the proposed endeavor supports the Petitioner. The evidence mainly focuses on the Beneficiary’s performance of his job responsibilities as a software engineer for the Petitioner and its [redacted] platform and does not demonstrate that the Beneficiary’s proposed endeavor will have the claimed national or global implications in the fields of software engineering, machine learning, or cloud computing. The record does not establish how the endeavor would have broader implications in the field, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first Dhanasar prong. Id. at 889-90.

Much of the evidence in the record and the Petitioner’s arguments focus on the importance of the fields of software development, data engineering, and machine learning, and the Petitioner’s reach and impact on cloud computing with its [redacted] platform. To support the argument for national importance, the Petitioner submitted various articles and reports discussing the use of artificial intelligence for cybersecurity; the need to strengthen artificial intelligence and its workforce; the importance of cybersecurity to various industries and government agencies; and the Petitioner’s [redacted] platform and its growth and use by companies and government agencies. However, this evidence does not mention the Beneficiary’s specific work with [redacted] and its site reliability engineering team.

The Petitioner also provided an analysis and advisory evaluation from Dr. [redacted] Ph.D., a professor of computer science and information systems at [redacted] in New York. The evaluation discusses how software engineering, as a profession, has both substantial merit and national importance. The evaluation mainly describes the profession of software engineering, including the role of software engineers in developing and improving the sustainability and security of cloud-based technologies and in improving cybersecurity for the healthcare and financial industries. Based on the expertise of software engineers and the significant potential for economic impact, the evaluation concludes that “software engineering is a professional endeavor that holds both substantial merit and is indeed in the national interest of the United States.”

However, the evaluation’s focus on the importance and need for software engineers does not demonstrate that the instant specific endeavor would have a prospective impact in the field. The opinion neither references nor focuses on the Beneficiary’s specific endeavor or its potential prospective impact on the U.S. economy or in the field of software engineering. Stating that the profession of software engineering is of importance, or that the profession of software engineering supports important industries such as cloud computing, healthcare, and finance, is not sufficient to meet the “national importance” requirement under the Dhanasar framework since it fails to address the potential prospective impact of the Beneficiary’s specific endeavor.

The Petitioner does not demonstrate that the Beneficiary’s proposed endeavor extends beyond its business and its clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, the Petitioner has not

demonstrated that the work the Beneficiary proposes to undertake as a senior software engineer leading projects for its [] reliance team offers original innovations that contribute to advancements in the software engineering, machine learning, and cloud computing industries or otherwise has broader implications for the software engineering field. The economic benefits that the Petitioner claims are supported by the Beneficiary's endeavor depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between the Beneficiary's proposed software engineering work for its [] platform and the claimed economic results.

Because the Petitioner has not established the Beneficiary's proposed endeavor is of national importance as required by the first prong of the Dhanasar precedent decision, the Beneficiary is not eligible for a national interest waiver. As 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 eligibility under the second and third Dhanasar prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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, it has not established the Beneficiary's eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.