U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30185369

Date: APR. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks employment-based second preference (EB-2) 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 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 did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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. Next, a petitioner 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. at 889, 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director determined that the Petitioner is a member of the professions holding an advanced degree.[2] The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

The Petitioner states that his proposed endeavor is to be a pilot.[3] He further states that he has more than eleven years of experience in the aviation field. He is currently employed as a captain/instructor for the Boeing 737 for [redacted] Initially, the Petitioner, through counsel, stated that he intended to "advance his career as a Pilot." In his response to the Request for Evidence (RFE), he stated that he plans to "generate a positive economic impact in all industries by transporting passengers and cargo nationally and internationally; socially, through the transport of organs and humanitarian flights."

With the initial filing, and relevant to the filing, the Petitioner submitted a cover letter, an ETA Form 750 Part B, evidence of his education and experience, an expert opinion, certificates of achievement, and a professional plan describing his proposed endeavor and claimed eligibility for a national interest waiver. He also submitted evidence of membership, employment verification letters, recommendation letters, and industry reports and articles.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to establish his eligibility for a national interest waiver. The Petitioner's response to the RFE includes a cover letter along with a new professional plan and statement letter, three additional recommendation letters, and industry reports and articles.

In response to the RFE, the Petitioner states again that his "plan is to continue his career in the United States as a Pilot."

After reviewing the Petitioner's response, the Director determined that the Petitioner had established that he has an advanced degree. Further, the Director determined that the Petitioner's endeavor is of substantial merit and that the Petitioner is well positioned to advance the endeavor. However, the Director determined that the Petitioner had not provided sufficient evidence to demonstrate that the proposed endeavor has national importance or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

The Director concluded that the Petitioner's claim that his general experience as a professional pilot would contribute to positive outcomes for the U.S. aviation industry and the broader economy did not demonstrate the broader implications of his proposed endeavor. Specifically, the Director determined that the Petitioner had not demonstrated that his proposed endeavor will have broader implications, or

[2] The record demonstrates that the Petitioner holds the equivalent of a U.S. master's degree awarded in 2011. See 8 C.F.R. § 204.5(k)(3)(i)(A).

[3] While the Petitioner mentions that he will "also train others," he does not sufficiently expand on that aspect of his proposed endeavor in the evidence submitted. The instructor aspect of his endeavor is derivative to his main endeavor of a being a commercial pilot.

national or global implications within a particular field, that his endeavor has significant potential to employ U.S. workers, that his endeavor will have substantial positive economic effects, or that his endeavor will broadly enhance societal welfare.

On appeal, the Petitioner submits a legal brief and asserts that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." Further, the Petitioner asserts that "there was nothing that could eventually lead to a reasonable doubt of the national importance of his proposed endeavor in the United States."[4] Thus, the Petitioner argues, the denial of his petition "is contrary to law or policy and unsupported by the evidence of record."

The Petitioner asserts that the Director imposed a novel standard of proof and did not consider the evidence objectively. However, the Petitioner does not identify the Director's novel standard or describe how it differs from a preponderance of the evidence. We agree with the Petitioner that the preponderance of the evidence standard governs this case, which the Director applied in this matter. See Matter of Chawathe, 25 I&N Dec. at 375-76.

Turning to the question of 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 "specific endeavor that the [noncitizen] proposes to undertake." See Matter of Dhanasar, 26 I&N Dec. at 889. Dhanasar provided examples of endeavors that may have national importance: having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id. at 889-90.

The Petitioner asserts that his proposed endeavor will have "broad implications, as it is not only national, but international in scope, and will produce significant national benefits, due to the ripple effects of his professional activities." The Petitioner states that his work will benefit his individual putative employer, airlines in general, governments, corporations, and cargo shippers.

Even crediting the Petitioner's industry reports and articles that point to a labor shortage in the aviation industry, the Petitioner has not shown how his specific proposed endeavor to work as a pilot may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and broader implications, such as "significant potential to employ U.S. workers or...other substantial positive economic effects, particularly in an economically depressed area." Id. at 889-90. The Petitioner provides no study, business plan, or projections about how his proposed endeavor will impact anyone beyond his specific employer. The Petitioner does not demonstrate how his work as a pilot will improve a national shortage or trigger substantial positive economic impacts. Likewise, the evidence does not show that the Petitioner's endeavor will broadly enhance societal welfare or how it has a significant potential to employ U.S. workers. Although the Petitioner provides evidence of his aviation licensure, good job references, and an expert opinion, these items mainly go to whether he is well-positioned, which the

[4] The Petitioner claims that the Director "did not give due regard" to a number of documents including his resume, professional plan, and letters of recommendation. However, these documents go to whether the Petitioner is well positioned to advance his endeavor and the Director determined that the Petitioner is well positioned.

Director already determined that he met, rather than national importance. The Petitioner has not demonstrated by a preponderance of the evidence that working as a pilot will have the type of broader implications envisioned by Dhanasar.

For instance, an article from 2022 titled, "Airlines face severe pilot shortage as summer travel season nears," states that "the pandemic heated a simmering pilot shortage to boiling point, leaving U.S. airlines scrambling to hire enough pilots to get flight schedules back to full capacity."[5] Another article, tilted, "American Airlines will end service to four cities in September citing pilot shortage," explains that the "pilot-shortage has been an industry-wide issue." While the Petitioner has put forward evidence that a pilot shortage exists in the United States, the articles and reports are of limited evidentiary value because they do not demonstrate how the Petitioner's proposed endeavor will meaningfully impact the shortage. The articles and reports do not mention the Petitioner by name or his proposed endeavor and do not provide insight into any metrics showing the breadth of the venture.

The Petitioner states that his proposed endeavor is to be a pilot in the United States. Insomuch as that is the extent of his proposed endeavor, the Petitioner has put forward insufficient evidence to demonstrate how his endeavor will be of national significance. "In determining national importance, the officer's analysis should focus on what the beneficiary will be doing rather than the specific occupational classification." 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. In the same way that the teaching activities proposed by the petitioner in Dhanasar were not shown to have a broader impact on the field of STEM education, here the Petitioner has not demonstrated that his proposed endeavor would have broader implications in the field of aviation on the U.S. economy beyond the companies benefiting from the Petitioner's services as a pilot. The Petitioner's updated professional plan and statement submitted in his RFE response states that the "American economy is highly dependent on commercial aviation due to the continental size of the United States." Further, he asserts that "[a]viation is an essential component of the modern global economy." However, his professional plan does not articulate exactly how his venture would alleviate the shortage he references to meet the standard of national importance.

The Petitioner also submitted an expert opinion letter authored by Professor [redacted] of the [redacted] We acknowledge that the expert opinion letter includes an analysis of the national importance of the "Petitioner's proposed endeavor." In his analysis, Prof. [redacted] provides background information about the importance of aviation to the United States. He further describes a current shortage of airline pilots and anticipates that the shortage will continue into the future. Professor [redacted] states that the "United States would greatly benefit from the expertise and skills of a seasoned commercial pilot" such as the Petitioner. What is missing from Professor [redacted] analysis is any concrete plan that the Petitioner has involving his endeavor. Professor [redacted] does not provide any discussion of how the Petitioner's endeavor of being a pilot will benefit more than the Petitioner and his future employer in any specific way. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id.

[5] While we discuss a sampling of these articles and reports, we have reviewed and considered each one.

Here, the expert opinion letter is of little probative value as the opinion does not meaningfully address the details of any proposed endeavor and why it would have national importance. Professor [redacted] does not explain how the endeavor will have substantial rather than incremental effects on the U.S. economy.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the Dhanasar framework, he is not eligible for a national interest waiver and further discussion of the second and third prongs would serve no meaningful purpose. As noted above, we reserve the Petitioner's appellate arguments regarding the remaining Dhanasar prong. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met the requisite national importance of Dhanasar's first prong analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.