U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30633814

Date: APR. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an airline captain and flight instructor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as a noncitizen of exceptional ability, 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 record 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 because the Petitioner did not establish that his proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Because this 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 remaining *Dhanasar* prong. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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).

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

II. ANALYSIS

The Director determined that the Petitioner was 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 he has more than 40 years of commercial flight experience. He is currently employed with an international airline operating out of Ethiopia as an airline captain and lead TRI/TRE (Type Rating Instructor/Examiner). He states that he plans to work as an airline training captain/instructor and "Full Motion" simulator instructor for the Boeing 777/787 airplane.

With the initial filing the Petitioner submitted a cover letter, evidence of his education and experience, employment letters, recommendation letters, and licenses.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence to attempt to establish his eligibility for EB-2 classification and a national interest waiver. The Petitioner's response to the RFE includes a letter brief, an ETA Form 750 Part B, an ETA Form 9089, additional evidence of his education and experience, and recommendation/job letters.

In his letter brief submitted in response to the RFE, the Petitioner similarly states that his proposed endeavor is "seeking the position of an Airline Training Captain and Simulator Instructor Boeing 777/787." He states that he has "already established a tentative agreement with Flight Training management for [his] potential hiring into this open position, pending the acquisition of a work permit." Initially, the Petitioner included the contact information for this potential job and stated that USCIS was free to contact them.

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 proposed endeavor has substantial merit and that the Petitioner was well positioned to advance the endeavor.[3]

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[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).

[2] As this matter is decided on national importance, we reserve the issue of whether the Petitioner meets the EB-2 classification.

[3] We reserve our decision as to whether the Petitioner is well positioned to effectuate his proposed endeavor. *See INS v.*

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 expertise as a professional pilot and flight instructor would contribute to positive outcomes for airlines and the broader economy did not demonstrate the broader implications of his proposed endeavor. Additionally, the Director stated that "the importance of the aviation industry to the United States, on its own, is insufficient to demonstrate that the petitioner's specific proposed endeavor rises to a level of national importance."

On appeal, the Petitioner submits his pro se letter brief and asserts that "there is a severe pilot shortage, a challenge that extends beyond personal aspiration." He further asserts that the "U.S. aviation sector is in dire need of more pilots, further exacerbated by a scarcity of qualified airline instructors." As a result, the Petitioner states that a "highly experienced airline instructor can play a pivotal role in helping alleviate this challenge by imparting their knowledge to hundreds, if not thousands, of aspiring pilots." He continues that "[o]ver time, I will train hundreds to thousands of pilots to meet the highest industry standards." However, he does acknowledge that "my qualifications alone may not offer an immediate remedy for the acute pilot shortage, as it is not akin to groundbreaking technology or a revolutionary invention."

In determining 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, as required by the first prong, 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.

We note that the Petitioner's summation of his prior work experience and its importance abroad are not material to determining whether the proposed endeavor has national importance. A petitioner's prior work experience and record of success are material to the second *Dhanasar* prong, whether an individual is well positioned to advance a proposed endeavor, which the Director had determined that the Petitioner met. *See id.*

The Petitioner's assertation that the U.S. aviation sector is "in dire need of more pilots" is unsupported. He does not establish how his proposed endeavor to work as an airplane captain and flight instructor may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Further, the Petitioner does not establish his endeavor has 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

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Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

endeavor will have benefits beyond his direct employer, and the unknown number of students he would train. Although the Petitioner provides evidence of his aviation licensure and good job references, these factors support prong two and whether he is well positioned to advance the endeavor. However, there is insufficient evidence in the record to demonstrate by a preponderance of the evidence that working as an air captain and flight instructor will have the type of broader implications envisioned by *Dhanasar* to meet the standard of national importance.

While the Petitioner's endeavor may impact the individuals he trains, or the employers or airlines for which he works, the national importance of this work has not been adequately explained or substantiated. Similarly, in *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of national importance because they would not impact his field more broadly. *Id.* at 893. The Petitioner quotes testimony given by Faye Malarkey Black, president and CEO of the Regional Airline Association, to the House Transportation and Infrastructure Subcommittee to support his claim. She stated that "[d]espite soaring passenger demand, a worsening pilot shortage has hindered the regional airline industry's recovery from the pandemic and is decimating small community air service." The Petitioner did not show how his proposed endeavor would alleviate this crisis so as to make it of national importance. Further, the Petitioner provided insufficient evidence that his proposed endeavor would benefit "small community air service" in particular. He readily acknowledges that his working as a pilot alone may not rise to the level of groundbreaking technology to reach the level of national importance.

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 factors under 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, as well as whether he meets the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* 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.