U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31346301

Date: APR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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. 884 (AAO 2016), 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:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director concluded that the Petitioner's proposed endeavor has substantial merit, but not national importance.[2] In determining national importance, we focus on the "the specific endeavor that the foreign national proposes to undertake" and look to evidence documenting the "potential prospective impact" of a petitioner's work. *Id.*

The initial description of the Petitioner's proposed endeavor did not provide specific details beyond his intention to continue building his career as a pilot, flight instructor, or aviation safety specialist. The cover letter accompanying the Petitioner's initial filing described his proposed endeavor as continuing "his career in the United States as a Pilot, as well as a Flight Instructor to other pilots currently in the field, or entering the aviation field." In his professional statement, the Petitioner stated that "I intend to continue using my expertise and knowledge in the field of aviation to dedicate myself to work in an airline company as a pilot and as an aviation safety specialist." The Petitioner also added that "I do intend to devote my whole field experience to continue my commitment in the field of air operations and flight safety as a doctoral student" to "further continue my career, as an assistant professor and researcher in University."

In response to the Director's request for evidence (RFE), the Petitioner stated that he is currently employed with [redacted] as a "Senior Flight Operations Instructor (SFOI)" and his goal is to "continue advancing within [his] profession as an Instructor Pilot at [redacted]." The Director determined that "the self-petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond his employer [redacted] and its customers and employees to impact the industry or field more broadly." We agree with the Director.

On appeal, the Petitioner contends that the Director did not apply the proper standard of proof and erred by not giving "due regard" to the evidence submitted, specifically his resume, professional plan, documentation of his work in the field, letters of recommendation, and industry reports.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden

[2] The Director further determined that the Petitioner is well positioned to advance his endeavor under the second prong but did not meet the third prong of the *Dhanasar*'s analytical framework.

under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, we find that the Director weighed the evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that he meets the first prong of the *Dhanasar* framework but determined that the evidence overall lacked probative value.

The Petitioner's evidence supporting his endeavor's national importance largely consisted of industry reports and articles addressing the shortage of airline pilots in the United States and importance of the aviation industry. On appeal, the Petitioner again asserts that "public safety and confidence in air travel are national priorities" and "[his] role in addressing the critical national issue of pilot shortage is substantial." We recognize the value of the airline industry and pilot professions, but merely working in an important field, industry, or profession is insufficient to establish the national importance of the proposed endeavor. We are also not persuaded by the Petitioner's claim that the proposed endeavor has national importance due to the shortage of pilots, as he did not provide sufficient evidence that a single pilot or pilot instructor at [redacted] stands to impact or significantly reduce the claimed national shortage. Further, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

In *Dhanasar*, we stated that "we look for broader implications" of the proposed endeavor and "[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." *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner does not offer sufficient evidence that his skills differ from or improve upon those already available and in use in the United States. The Petitioner submitted several reference letters attesting to his work experience as a pilot and aviation safety inspector in Brazil, but they do not support that the Petitioner's methodologies or expertise will significantly impact the field of aviation in a way that rises to national importance.

Most of the recommendation letters are written by the Petitioner's colleagues who served in the Brazilian Air Force and attest to the Petitioner's technical ability and competence as a pilot. Some of the letters discuss the Petitioner's contributions in investigating airline accidents and participation in drafting a legislation that assists airline accident victims and families. We acknowledge that the Petitioner is an experienced pilot and aviation safety inspector; but the Petitioner's expertise and experience relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. Here, the recommendation letters do not offer sufficient information to demonstrate the prospective impact of his proposed endeavor rising to the level of national importance.

The Petitioner also submitted an expert opinion letter from [redacted] a lecturer in the aviation department at [redacted] The expert letter discusses the Petitioner's educational and employment background and broadly addresses the shortage of airline pilots in the United States but does not discuss details of the Petitioner's future endeavor and its specific impact. The author further opines that "Latin America has a history of producing Pilots with exceptional skill and proficiency, due to the demanding terrain and regional landing conditions" and concludes that "all companies dealing in aircraft and aircraft equipment can profit from investing in Latin America" and "U.S. aviation companies doing business or planning to establish business abroad would benefit from the expertise and skills of an experienced Pilot such as [the Petitioner]." However, the Petitioner has not

claimed that he will participate in any collaborative works with the aviation industry in Latin America; rather his endeavor's focus is on continuing his career in the United States as a pilot or a flight instructor. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

We further stated that "[a]n 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." *Dhanasar*, 26 I&N Dec. at 890. The Petitioner generally claims that the aviation industry is "integral to the U.S. economy" and his endeavor "supports this sector's stability and growth" as well as "profitability and efficiency of the broader aviation industry." However, the Petitioner has not supported his claims with pertinent evidence showing that the individual work at one specific airline will generate substantial revenue or employment in a particular region or in economically depressed areas, as contemplated by *Dhanasar*. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Considering the record in its entirety, we conclude that the Petitioner does not adequately describe or demonstrate how his future work rises to the level of having national importance within the field. The record does not show that the specific work the Petitioner proposes to undertake will offer original innovations to advance the industry, or that it otherwise has wider implications in the field. The evidence did not sufficiently articulate how his particular proposed endeavor would have national importance beyond his current employer and its customers.

For these reasons, we conclude that the Petitioner did not establish national importance of the proposed endeavor and does not meet the first prong of *Dhanasar*. Since the identified basis for denial is dispositive of the Petitioner's appeal, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.[3]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[3] *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).