In Re: 37893675 Date: APRIL 17, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an aviation company, seeks employment-based second preference (EB-2) immigrant classification of the Beneficiary as an individual 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Beneficiary did not qualify for EB-2 classification and the Petitioner did not establish 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (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:

- 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.

Id.

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

II. ANALYSIS

The Petitioner is an aviation company engaged in air transportation for [redacted] in support of his healthcare related businesses. The Beneficiary is an airline pilot with over twenty years of experience. In a letter submitted with the petition, the Petitioner indicated that the proposed endeavor is to employ the Beneficiary as "Second-in-Command or Copilot ... responsible for assisting or relieving the pilot in manipulating the aircraft serviced by [the Petitioner] and, in the event of Pilot-in-Command incapacitation, will take over their duties and responsibilities."

A. EB-2 Classification

SCOPS determined the Beneficiary was not eligible for EB-2 classification as an individual of exceptional ability. As the Beneficiary is not eligible for a national interest waiver for the reasons discussed below, we do not reach and hereby reserve our determination of his eligibility for EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

B. National Interest Waiver: Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* SCOPS determined the Beneficiary's proposed endeavor has substantial merit. We agree.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* This consideration may include whether the proposed endeavor has significant potential to employ U.S. workers (particularly in an economically depressed area), has other substantial positive economic effects, has national or even global implications within the field, or other broader implications indicating national importance. *Id.* at 889-90. SCOPS determined the Petitioner did not establish the proposed endeavor has national or global implications in the aviation industry and that the Beneficiary's work would extend beyond the Petitioner to impact the industry more broadly.

On appeal, the Petitioner asserts SCOPS mischaracterized the Beneficiary's proposed endeavor as only benefiting Mr. [redacted] The Petitioner claims the proposed endeavor supports Mr. [redacted] healthcare businesses and its potential prospective impact is shown in the current shortage of medical specialists in Puerto Rico. However, a labor shortage alone does not establish national importance. The Department of Labor addresses labor shortages through the labor certification process which the Petitioner seeks to waive in this case.

The Petitioner also claims the Beneficiary's proposed endeavor benefits social welfare by providing accessible healthcare and provides economic benefits such as job creation in medical services and medical equipment manufacturing industries. The Petitioner cites no evidence to support these claims. The Petitioner also does not articulate how the Beneficiary's work would extend beyond co-piloting airplanes for the Petitioner to impact his field more broadly or provide social and economic benefits

to Puerto Rico in a manner indicative of national importance. *See id.* at 889 (explaining "we look for broader implications").

The Petitioner submitted a letter from D-S-[2], Assistant Professor of [redacted], expressing his opinion that the Beneficiary qualifies for a national interest waiver. D-S- asserts the Beneficiary's proposed endeavor would address a global pilot shortage. He does not establish how the employment of one individual would ameliorate a global pilot shortage and as previously discussed, the Department of Labor addresses labor shortages through the labor certification process which the Petitioner seeks to waive in this case. D-S- also claims the Petitioner's proposed endeavor has significant potential to employ U.S. workers or other substantial positive economic effects because of the size and value of the airline industry. The record does not support this claim as there is no evidence that the Beneficiary's proposed endeavor would employ anyone besides the Beneficiary or would generate income or taxes that would positively affect the Puerto Rican economy at a level indicative of national importance.

D-S- further asserts the Beneficiary's proposed endeavor will broadly enhance societal welfare because he is an experienced pilot who can ensure airline safety. D-S- does not demonstrate how the Beneficiary's work as a co-pilot would extend beyond the Petitioner to impact airline safely more broadly in a manner commensurate with national importance. D-S- also claims the Beneficiary's proposed endeavor impacts the pilot shortage crisis, which Congress is addressing through proposed legislation. As previously explained, D-S- does not establish that the Petitioner's employment of the Beneficiary as a single co-pilot would address a national pilot shortage. In addition, the Department of Labor addresses labor shortages through the labor certification process which the Petitioner seeks to waive in this case.

The Petitioner emphasizes the Beneficiary's extensive qualifications, skills and experience, which are well documented in the record, but are more relevant to the second *Dhanasar* prong which examines whether an individual is well positioned to advance the proposed endeavor. The record also does not indicate that any of the Beneficiary's past or intended work had or would have national or global implications in his field. *See id.* (discussing improved manufacturing processes or medical advances as examples of national or even global implications within a particular field).

In sum, the record does not establish that the Beneficiary's proposed endeavor has significant potential to employ U.S. workers, has other substantial positive economic effects, has national or even global implications within the aviation industry, or other broader implications indicating national importance. The Petitioner has thus not demonstrated that the Beneficiary meets the second *Dhanasar* prong.

C. The Remaining *Dhanasar* Prongs

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of the Beneficiary's eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. at 25.

[2] We use initials to protect the privacy of the referenced individual.

III. CONCLUSION

The Petitioner has not established the national importance of the Beneficiary's proposed endeavor and the Beneficiary does not meet the first prong of the *Dhanasar* analytical framework. Consequently, the Petitioner has not demonstrated that the Beneficiary is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.