U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30336042

Date: APR. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial airline pilot, seeks employment-based second preference (EB-2) immigrant classification 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he was eligible for the requested classification or 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. 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 he is eligible for the requested classification or 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* prongs. *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. Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at

least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once eligibility for the underlying EB-2 classification is established, 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. 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,[3] 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. EXCEPTIONAL ABILITY

The first issue to be addressed is whether the Petitioner established his eligibility for EB-2 classification. The Petitioner claims eligibility as an individual of exceptional ability.[4] The Director determined that the record suggested that the Petitioner met three of the six criteria within the exceptional ability determination. However, the Director concluded that, while the Petitioner has an academic record equivalent to a U.S. bachelor's degree, at least ten years of full-time experience as a commercial pilot, and a license, the evidence did not support a finding that the Petitioner has expertise significantly above that which is ordinarily encountered in the profession. Therefore, in a final merits analysis, the Director determined that the evidence did not establish the Petitioner's eligibility as an individual of exceptional ability.

On appeal, the Petitioner disagrees with the Director's decision and, relying on evidence already in the record, addresses each of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) that he asserts establish his eligibility. He states that the Director "targets specific pieces of evidence" and misapplies the appropriate standard of review for a final merits determination.

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *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).

[4] The Petitioner has not asserted at any time in these proceedings that he is a member of the professions holding an advanced degree.

other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act. Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows the petitioner possesses exceptional ability. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

The Director fully analyzed and discussed the evidence in the record, considering the totality of the evidence in conducting a final merits determination of the Petitioner's eligibility. In our de novo review of the Petitioner's eligibility for the underlying classification, we agree with the Director and conclude that the Petitioner has not established that he is an individual of exceptional ability. Therefore, we adopt and affirm this portion of the Director's decision. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

III. NATIONAL INTEREST WAIVER

The Petitioner states that he is an experienced and skilled airline pilot with licenses in multiple countries and over 11 years of experience in the aviation field, operating and training others on a wide array of aircraft. His proposed endeavor is to continue working in aviation to fill pilot positions in the United States and train current aviation professionals. He states, "I can work as a Commander (Captain); Co-Pilot; Instructor for airlines, aviation schools, or universities; Private Pilot; Training Manager; Flight Standards, Safety, or Simulator Instructor." The Petitioner has created his own company, [redacted] through which he plans to offer educational programs to partners, including "Aviation Academies, Colleges, Universities, U.S. Airlines, Pilot Unions, Aviation Consultancy Groups, Fixed-Base Operators, National Airports, and the FAA (Federal Aviation Administration)."

With the initial filing the Petitioner submitted evidence of his education and experience, and a personal statement describing his proposed endeavor and claimed eligibility for a national interest waiver. He also submitted recommendation and support letters, and industry reports and articles discussing the aviation industry and the shortage of pilots in the United States.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the requested classification and for the national interest waiver. The Petitioner's response to the RFE includes, in

part, additional recommendation and support letters, additional articles about the aviation industry, an additional personal statement, a business model, and an expert opinion letter.

After reviewing the Petitioner's RFE response, the Director determined that the Petitioner had submitted sufficient evidence to demonstrate that his proposed endeavor has substantial merit. However, she concluded that the Petitioner had not demonstrated that his proposed endeavor had national importance, or that he is well-positioned to advance his proposed endeavor. The Director further concluded that further analysis of the third prong of the framework of *Matter of Dhanasar*, whether on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of the labor certification, would serve no meaningful purpose. The Director specifically noted that the record did not "document how [the Petitioner] plans to create his 'aviation education programs'… nor does it demonstrate how doing this will provide substantial economic benefits to the field, as a whole." Additionally, the Director noted that the record did not demonstrate that the Petitioner's knowledge and experience in aviation "has generated positive discourse in the field which renders him well positioned to advance his proposed endeavor."

A. Substantial Merit and National Importance

As noted above, the Director determined that while the Petitioner established that the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance as set forth under the first prong of the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884. We agree, for the reasons explained below.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*, at 889.

Upon review of the entire record, we conclude that the Director properly reviewed the provided evidence and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar* using the preponderance of the evidence standard. The Petitioner has not met his burden of proof and provided probative, relevant, and credible evidence establishing the national importance of his endeavor. *Matter of Chawathe*, 26 I&N Dec. at 376.

The Petitioner relies on the importance of the aviation industry and the shortage of pilots in the United States as evidence of the importance of his endeavor.[5] However, as explained by the Director, the importance of an endeavor is determined not by the industry or occupation it involves, but by what its specific impact will be. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. For example, an endeavor may qualify if it has national implications within a particular field or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id*.

[5] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

In *Dhanasar*, we found that while the noncitizen's work as a science teacher had substantial merit, it did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Id.* at 893. We agree with the Director that in this instance, the Petitioner has not provided sufficient information about his endeavor to establish what its impact on the field of aviation would be.

According to the Petitioner's personal statement, his "proposed endeavor in the United States is to offer [his] expertise . . . to pursue positions within U.S. airline companies . . .". However, the purpose of the national interest waiver is not to facilitate a petitioner's U.S. job search. Anyone seeking such a waiver must identify "the specific endeavor" that they propose to undertake. *Id.* at 889. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation."). Here, the Petitioner has not sufficiently described his proposed endeavor, and his claims that his employment as a pilot and flight instructor "will support millions of jobs all over the world" are insufficient to establish how his endeavor's impact will extend beyond his customers and employers to the broader aviation field.

We further agree with the Director that the evidence and arguments regarding the Petitioner's skills as a pilot relate to the second *Dhanasar* prong, which concerns the Petitioner's ability to advance his proposed endeavor. *Id.* at 890. They do not establish what impact that endeavor would have.

The Petitioner also references an expert opinion prepared by [redacted] of the [redacted] We acknowledge that the expert opinion includes an analysis of the national importance of the Petitioner's proposed endeavor. In his analysis [redacted] generally describes the Petitioner's experience and provides facts and statistics on the airline industry. He states generally that the Petitioner's proposed endeavor "has significant potential to employ U.S. workers and has other substantial positive economic effects." However, [redacted] does not discuss the details of the Petitioner's specific proposed endeavor, including how its employment of U.S. workers and other economic effects will have a potential prospective impact rising to the level of national importance. 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.*

Here, the advisory opinion is of little probative value as it does not meaningfully address the details of the Petitioner's specific proposed endeavor and why it would have national importance. His opinion is general in nature, emphasizing the Petitioner's qualifications and concluding that the aviation industry is of national importance. "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 (emphasis added). [redacted] does not provide a substantive analysis of the Petitioner's specific proposed endeavor or suggest that the Petitioner's skills differ from or improve upon those already available and in use in the United States.

The record does not indicate that the Petitioner's endeavor will have national implications for the field of aviation. It also does not quantify what economic benefits the endeavor will generate, particularly in a depressed area, and so does not show that the endeavor will result in "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* Therefore, the Petitioner has not established that his endeavor will have national importance.

The Petitioner continues to rely upon the asserted merits of the services he will provide, his personal and professional qualities and achievements, and the general demand for commercial pilots. However, as set forth above, the evidence does not sufficiently demonstrate the proposed endeavor's national importance. Therefore, we conclude that the Petitioner has not met the requisite first prong of the *Dhanasar* framework.

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 balancing 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.[6] *See INS v. Bagamasbad,* 429 U.S. at 25.

III. CONCLUSION

The Petitioner has not established that he is eligible for classification as an individual of exceptional ability or that he is otherwise eligible for EB-2 classification. Additionally, as the Petitioner has not met all of the requisite three prongs set forth in the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, or that he is well-positioned to advance the proposed endeavor. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response. The Director addressed the previously submitted evidence in the RFE and decision, and explained how it was deficient in establishing that the Petitioner met the *Dhanasar* prongs and would be eligible for a national interest waiver. The Petitioner's assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.