U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32675605

Date: AUG. 14, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a commercial pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner established his eligibility for the EB-2 classification as a member of the professions holding an advanced degree, he did not show that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is now before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of proof and must establish her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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[1], grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

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

II. EB-2 CLASSIFICATION

The record reflects that the Petitioner sought EB-2 classification below only as a person of exceptional ability, which requires him to first satisfy at least half of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). Although the Director found that he met at least three of the six regulatory criteria, the Director concluded, upon a final merits assessment, that he did not establish that he has a degree of expertise significantly above that ordinarily encountered in the field of aviation as a commercial airline pilot. 8 C.F.R. § 204.5(k)(2) (defining "exceptional ability"); *see also* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (discussing a two-part framework consisting of the regulatory criteria and a final merits determination). However, although he did not seek classification below as an advanced degree professional, the Director nonetheless concluded that the Petitioner is eligible for the classification because his foreign military pilot degree and a subsequent master's degree establish that he is a professional holding an advanced degree or the foreign equivalent of a U.S. bachelor's degree with five years of progressive post-degree experience in the specialty.

Upon de novo review, and as a preliminary matter, the record does not show that the Petitioner has a U.S. or foreign equivalent advanced degree, or that he has a U.S. bachelor's degree or a foreign equivalent degree. We thus withdraw the Director's determination to the contrary that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree.

To establish that the Petitioner holds a qualifying advanced degree for EB-2 classification purposes, his petition must be accompanied by an official academic record evidencing a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A). "Advanced degree" means a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.* The Petitioner therefore may alternatively present an official academic record evidencing a U.S. baccalaureate or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing at least five years of progressive post-degree experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

As evidence of his credentials, the Petitioner submitted a copy of his 2005 "Military Aviator Pilot" degree from Mexico and underlying transcript. But the degree certificate does not indicate what type of degree he was granted, including whether it is a bachelor's level degree as the Director concluded. Further, both the certificate and transcript clearly show that the Petitioner completed a 3-year program. He did not submit an independent academic evaluation or any other evidence demonstrating that this 3-year degree is equivalent to a U.S. bachelor's degree, which generally requires four years of university-level education. *See, e.g.*, *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The Electronic Database for Global Education (EDGE), which we consider a reliable source of information on foreign credential equivalencies, further indicates that a 3-year degree from Mexico is comparable to only three years of university study in the United States.[2] Although the Petitioner generally refers to his 3-year pilot degree as a "bachelor's degree," his documentary evidence does not demonstrate

[2] *See* https://www.aacrao.org/edge/country/credentials/mexico (last accessed August 14, 2024). EDGE is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a professional association of higher education admissions and registration professionals who represent academic institutions located in over 40 countries.

that it is in fact equivalent to a U.S. bachelor's degree. 8 C.F.R. § 204.5(k)(3)(i)(B).[3] The Petitioner also submitted a 2013 "Master in Business Management" diploma from the [redacted] in Honduras and asserted that he attended this university from 2007 to 2012 and completed a thesis for the program. However, the record does not contain an independent evaluation or official academic record for this diploma, such as a transcript, and we are unable to determine its claimed master's level U.S. equivalency. 8 C.F.R. § 204.5(k)(3)(i)(A). Therefore, considering the foregoing, and contrary to the Director's determination, the Petitioner has not established that he qualifies for the EB-2 classification as an advanced degree professional.

Although the Director also found that the Petitioner did not establish that he is a person of exceptional ability for EB-2 classification purposes, he does not challenge or address this finding on appeal. We therefore do not reach this issue here.

III. NATIONAL INTEREST WAIVER

Without first establishing his eligibility for EB-2 classification, the Petitioner cannot qualify for a national interest waiver as a matter of discretion. Even if we were to consider the merits of this waiver, we agree with the Director's decision denying it because the Petitioner did not demonstrate his proposed endeavor is of national importance and thus did not meet *Dhanasar*'s first prong.

The Petitioner intends to continue to work as a commercial airline pilot in the United States and also plans to work as a flight instructor for [redacted], an aviation training center.

Dhanasar's 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. In assessing whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

We agree with the Director that while the Petitioner's proposed work as a commercial pilot and flight instructor may have substantial merit, the record does not establish that it is of national importance because his documentary evidence does not show his proposed undertakings would have significant potential to employ U.S. workers, broadly impact the aviation field beyond his occupations, or otherwise have broader economic or societal implications rising to the level of national importance. On appeal, he does not submit any new evidence but alleges that the Director failed to apply the correct evidentiary standard and did not consider all the relevant evidence.

Under the preponderance of the evidence standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed and weighed the Petitioner's documentation by a preponderance of the evidence to evaluate whether his proposed endeavor is of national importance as contemplated by *Dhanasar*.

[3] Absent evidence establishing that he has a U.S. bachelor's or foreign equivalent degree, no purpose would be served in addressing whether the Petitioner has the requisite five years of post-degree experience.

In asserting that his proposed endeavor has national importance, the Petitioner primarily refers to his academic credentials and professional experience, as indicated in his intent letter, professional plan, resume, and numerous support letters, as well as general market information included in the voluminous industry reports and articles pertaining to the aviation industry, alarming pilot shortage, and the importance of education in the field. He maintains that, given his expertise and extensive background, which he claims ideally align with the increasing demand for pilots and instructors, he will help fill the job shortage and provide high quality training to future pilots, which would in turn have a broader, substantial positive impact in the industry and this country. However, the Petitioner's reliance on his credentials and experience relate to the second prong of the *Dhanasar*, which specifically relates to whether he is well positioned to advance the proposed endeavor and "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec.at 890. For *Dhanasar's* first prong, at issue here, we consider the "potential prospective impact" of the proposed endeavor, rather than the importance of the specific field or industry in which he proposes to engage. *Id.* at 889. In doing so, we assess the evidence to determine whether the specific endeavor the Petitioner proposes to undertake has broader implications within the particular field or industry. *Id.* at 890. Although we acknowledge that the Petitioner's proposed endeavor as a commercial pilot and flight instructor could have a positive impact on his future customers and employers, he has not persuasively explained, and the evidence does not demonstrate, how being a pilot and instructor for various companies would have broader implications for the aviation industry and U.S. economy as he claims, beyond his own occupations and the companies' potential clientele.

The Petitioner also reiterates that his extensive experience and expertise in piloting skills and his plans to employ cutting-edge training methodology for future pilots indicate that his proposed endeavor has national importance. However, the record does not contain any competent evidence demonstrating that his pilot expertise and claimed innovative training methods were ever recognized or adopted by the aviation industry at large or otherwise made a significant economic or other impact. We note that in *Dhanasar*, the petitioner's work as a science teacher, while it was found to have substantial merit, did not qualify him under the first prong because the record did not show how that work would impact science education more broadly. *Id.* at 893.

In *Dhanasar*, we also noted that endeavors with "significant potential to employ U.S. workers" or those having "substantial positive economic effects, particularly in an economically depressed area" may have national importance. *Id.* The Petitioner, in his two-page letter of intent as well as a subsequent four-page professional plan, asserts that his endeavor as a pilot and flight instructor would broadly impact the national economy and help provide U.S. jobs by addressing the demand for pilots. However, he does not provide any detail or corroborating evidence on the claimed economic impact and hiring potential, such as financial or employment projections directly attributable to his proposed work. The record therefore does not reflect that the proposed endeavor would have positive economic effects at the level of national importance or that it has significant potential to employ U.S. workers.

The Petitioner continues to rely on the importance of the aviation industry and a shortage of pilots as evidence of the significance of his work by referencing various industry reports. However, as stated, the importance of an endeavor is determined by its specific potential prospective impact, not by the industry or occupation it involves. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. The purpose of the national interest waiver thus is not to facilitate an individual's U.S. job search where there are job shortages. Anyone seeking such a waiver must demonstrate that "the specific endeavor" they propose

to undertake has national importance. *Id.* Further, as the Director determined, the claimed pilot shortage is not a relevant consideration here in assessing the issue of national importance as the U.S. Department of Labor directly addresses shortages of qualified workers through its labor certification process. *See id.* at 885; *see also* 20 C.F.R. § 656.1. Although the Petitioner generally asserts that the Director failed to consider "the urgency" created by the claimed shortage, he does not meaningfully address how this claimed urgency specifically relates to his proposed work and *Dhanasar*'s national importance prong, and the record does not otherwise show that there is an urgent national interest specifically in his proposed work as a pilot and a flight instructor.

Although the Petitioner's endeavor has merit, he has not established that being a well-qualified pilot and flight instructor has national importance as the record lacks sufficient probative evidence that his endeavor has broader national implications in the aviation industry beyond his employers and customers. Considering the foregoing, the Petitioner has not established the national importance of his proposed endeavor, and therefore has not established eligibility for a national interest waiver.

As the identified grounds for denial, the Petitioner's inability to establish his eligibility for the underlying EB-2 classification and satisfy *Dhanasar*'s first prong for a national interest waiver, are dispositive of this appeal, we decline to reach the remaining appeal arguments as to the second and third prongs of the framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.