U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31657902

Date: AUG. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial 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 record did not establish the Petitioner's qualification as an individual of exceptional ability and 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. 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

[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 individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. 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.

Id.

II. ANALYSIS

The Petitioner, a commercial pilot, seeks an 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 EB-2 classification. The Director denied the underlying petition, concluding that the Petitioner had not established his qualification for the underlying EB-2 classification as an individual of exceptional ability. The Director further determined that, while the Petitioner had established the substantial merit of his proposed endeavor, he had not established its national importance and that it would be beneficial to the United States to waive the requirement of a job offer, and thus a labor certification.[4]

As an initial matter, the Petitioner asserts that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the [Petitioner]." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See* 1 *USCIS Policy Manual*, *supra* at E.4(B). While the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

[3] *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).

[4] The Director determined that the Petitioner had established that he is well positioned to advance the proposed endeavor.

On appeal, the Petitioner does not contest the Director's determination that he had not established eligibility for the underlying EB-2 classification as an individual of exceptional ability.[5] Even had the Petitioner established his eligibility for the classification sought, we find, upon de novo review of the record in its entirety, that he has not demonstrated by a preponderance of the evidence that the proposed endeavor has both substantial merit and national importance under the first prong of *Dhanasar*. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

The first prong of the *Dhanasar* analytical framework, 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. *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We determined in *Dhanasar* that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. We also 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." *Id.* at 890.

The Petitioner's proposed endeavor, as described in his professional plan and statement, is "to continue using [his] expertise and knowledge in the field of aviation by working as a Pilot for airlines, Charter Operators, Private Companies or Entities in the U.S." In this plan, the Petitioner explains that he also "can work as a flight instructor for the aviation sector and serve as a seasoned pilot in flight training centers and schools." In an updated professional plan and statement, submitted with his response to the Director's request for evidence (RFE), the Petitioner restated his intent to "secure a position as a Pilot in Command or Second in Command in airlines," but clarified that in the alternative he would be "open to serving as a ground, flight, or crew instructor for reputable organizations," and that in furtherance of his career he "aspire[d] to expand [his] scope of influence and impact by becoming [a Federal Aviation Administration] Check Airman or Inspector." The Petitioner explained that in these roles he could "bring [his] expertise to the forefront, ensuring safe and efficient flight operations," "alleviate the strain on the aviation industry," and "play a pivotal role in training and certifying future aviators."

The Petitioner argues on appeal that the Director's denial did not adequately consider his resume, professional plan, letters of recommendation, evidence of his work in the field, and industry articles in the record. The Petitioner's resume and an expert opinion letter from a lecturer in the [redacted] provide detail about the Petitioner's work experience, skills, and qualifications as a pilot. Other evidence in the record, including the Petitioner's

[5] As the Petitioner did not address this issue on appeal, we deem the issue waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

completion certificates in coursework related to flight operations, aircraft certification, and aviation in general also establish the Petitioner's knowledge of and skills in his field. The Petitioner's skills, knowledge, and prior work in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner provided numerous industry reports discussing commercial pilots, flight schools, and domestic and international airlines in the United States. He also submitted articles addressing the use of aviation and aerospace concepts to interest and educate students in science, technology, engineering, and mathematics. These articles generally indicate the importance of commercial pilots and the field of aviation in the United States. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id*. at 889.

On appeal, the Petitioner references a growing shortage of pilots in the United States and contends that he will be addressing this shortage, "which cannot be addressed by the U.S. workers as demand exceeds supply." The Petitioner provided numerous articles discussing the shortage of airline pilots in the United States. In the expert opinion letter, the lecturer at [redacted] stated generally that the Petitioner's "work is in demand," that "highly experienced executive pilots are especially in demand," and that statistics from the Bureau of Labor Statistics indicate the projected growth in the employment of commercial pilots from 2019 through 2029. We are not persuaded by the Petitioner's argument that his proposed endeavor is of national importance because of increased demand and a potential to address labor shortages in the field. The Petitioner has not established that his proposed endeavor stands to significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Finally, the Petitioner contends that the national importance of the proposed endeavor is shown as it "would have a significant impact on various industries in the United States, including trade, tourism, and the economy as a whole." In support of this contention, he provides a general discussion of the air transportation industry and the number of jobs it creates directly and indirectly through tourism and as a "driver of global trade and e-commerce." The Petitioner further asserts that the national importance of his work "surpasses merely working, and generating revenue, for commercial airlines," explaining that his experience will "allow him to serve as an instructor to current professionals, and new pilots entering the field." However, the Petitioner does not offer evidence to show how his proposed endeavor would impact the air transportation industry or otherwise would operate on such a scale as to rise to a level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his potential employers and clientele to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the second and third prongs of the *Dhanasar* framework. *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"); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of 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. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.