U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31679617

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an 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 record did not establish that the Petitioner qualified for EB-2 visa classification. The Director further concluded the record did not support a finding 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. 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 the requisite degree of expertise and will

[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).

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act. [2]

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 asserts that he is eligible for the EB-2 classification as an individual of exceptional ability and states that he intends to come to the United States to work as a flight instructor. His proposed endeavor is "to teach and train pilots which will contribute to the employment of U.S. workers and broadly enhance societal welfare" in the United States. The Petitioner contends his career as an airline pilot gives him the necessary experience to succeed in this role.

To qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. The Director denied the petition, in part, determining that the Petitioner did not meet the EB-2 classification as an individual of exceptional ability. The Director further determined that although the Petitioner established the substantial merit of his proposed endeavor, he did not establish its national importance, that he is well-positioned to advance that proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer. We agree that the Petitioner has not established that his proposed endeavor has national importance and will dismiss the appeal accordingly.[4]

The Director determined that the Petitioner did not establish that his proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director found the Petitioner did not establish his proposed endeavor would have broader implications to the field on a national or global level or have substantial positive economic effects. The first prong of

[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.
[3] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).
[4] As the Petitioner has not overcome the Director's determination that the record did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest, we need not address whether he is eligible for the EB-2 classification as an individual of exceptional ability.

Dhanasar, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Petitioner asserts on appeal that his proposed endeavor of coming to the United States to work as a flight instructor will "protect[ ]the safety not only of U.S. citizens but tourists visiting our country," thereby supporting the economy. He also continues to contend his proposed endeavor will positively impact the economy by "contribut[ing] to the employment of U.S. workers." We look for "broader implications" when determining whether a proposed endeavor has national importance, and "[a]n undertaking may have national importance, for example, because it has national or even global implications within a particular field." *Id.* Although the Petitioner has provided evidence of his experience as an airline pilot, including letters from employers and colleagues who attest to his abilities, the inquiry in the first prong of the *Dhanasar* framework focuses on "the specific endeavor that the foreign national proposes to undertake." *See id.* The Petitioner's skills, knowledge, and prior work in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id.* 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 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.

The Petitioner provided industry reports discussing flight training and a pilot shortage in the United States, in addition to articles on the aviation industry. These articles generally indicate the importance of commercial pilots and the field of aviation in the United States. However, they do not address the relevant question of the importance of the specific endeavor that the Petitioner proposes to undertake, rather than the general field in which he intends to work. *See id.* at 889. The Petitioner also references the pilot shortage in the United States and argues his proposed endeavor as a flight instructor will help alleviate the pilot shortage by training new pilots. However, the evidence submitted does not establish that his proposed endeavor stands to significantly reduce a national labor shortage in the air travel field as claimed. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

Here, we conclude the Petitioner has not submitted evidence to establish that his proposed endeavor stands to sufficiently extend beyond his potential students or employers 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.

Further, because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's additional appellate arguments regarding his eligibility for a discretionary waiver under the *Dhanasar* analytical framework and his eligibility for EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

IV. 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 reasons.

ORDER: The appeal is dismissed.