U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37828443

Date: AUG. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 although the Petitioner is an advanced degree professional, he 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). A "profession" is one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] The listed occupations are architects, engineers, lawyers, physicians, surgeons, and certain teachers.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] 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. at 889.

II. ANALYSIS

A. Professional Position Requirement

SCOPS determined that the Petitioner is an "advanced degree" professional within the meaning of 8 C.F.R. § 204.5(k)(2). A petitioner seeking a national interest waiver must show that the intended occupation through which they plan to advance their proposed endeavor meets the definition of a profession. *See generally*, USCIS Policy Alert PA-2025-03, *Second Preference Eligibility for National Interest Waiver Petitions* 7 (Jan. 15, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250115-Employment-BasedNationalInterestWaivers.pdf (USCIS Policy Alert). As noted above, for the second preference classification, a profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). Based on this requirement, not everyone who holds an advanced degree (or its foreign equivalent) necessarily qualifies for classification as a member of the professions holding an advanced degree because the occupation underlying the proposed endeavor must also require a bachelor's degree for entry into the occupation. *See Matter of Katigbak*, 14 I&N Dec 45, 46 (Reg'l Comm'r 1971) (holding that the degree or major must be academically appropriate to the profession for which petitioned). Further, "[a] professional occupation is determined by the general requirements to enter the intended occupation, and not by the credentials of any one person seeking to work in that field." *See* USCIS Policy Alert, *supra*, at 7. USCIS determines on a case-by-case basis, based on the evidence submitted, whether a petitioner's intended occupation is a professional occupation, and it is that petitioner's burden to establish, by a preponderance of the evidence, that the intended occupation requires at least a bachelor's degree or its foreign equivalent degree for entry. *Id.*

Here, the Petitioner indicated on the petition that his intended occupation was to work as a commercial pilot, which has a corresponding Standard Occupational Classification code of 53-2012. According to the Occupational Information Network (O*NET), these occupations usually require "training in vocational schools, related on-the-job experience, or an associate's degree." *See* Summary for

[2] *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).

Commercial Pilots, O*NET OnLine, https://www.onetonline.org/link/summary/53-2012.00 (last visited August 28, 2025 and added to the record). Furthermore, the Petitioner did not submit corroborating evidence to demonstrate, by a preponderance of the evidence, that a U.S. baccalaureate degree (or its foreign equivalent) is the minimum requirement for entry into the commercial pilot occupation.

In his personal statements, the Petitioner identified his intended occupation as a commercial pilot, a flight instructor, an airline industry consultant creating policies to retain employees, and a consultant and negotiator for modernization of aircraft. The record does not contain any evidence to demonstrate that these additional aspects of his endeavor qualify as professions within the meaning of the Act. As a result, the record does not establish that his intended occupation in the United States requires at least a bachelor's degree as a minimum requirement for entry and that consequently he is eligible for EB-2 classification as a member of the professions holding an advanced degree.[3] Because the Petitioner's appeal will be dismissed for another dispositive reason, we will not base our dismissal on this ground. However, in any future proceedings, the Petitioner must address this deficiency in the record.

B. The Petitioner's Proposed Endeavor

To demonstrate eligibility for a national interest waiver, a petitioner must propose a "specific endeavor." *See Matter of Dhanasar*, 26 I&N Dec. at 889. 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. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.*

As noted above, the Petitioner indicated on the petition that his intended occupation was to work as a commercial pilot. He further indicated that he proposes to work, full-time, as a "large helicopter pilot and instructor" where he will "pilot and navigate the flight of fixed-winged aircraft on nonscheduled air carrier routes, or helicopters." The description of the proposed endeavor in the attorney letter accompanying his petition states that the Petitioner's focus will be on leveraging "his twenty years of international aviation experience to train new pilots, thus helping to alleviate the well-documented shortage of pilots . . . in the United States and globally" and that to accomplish this, the Petitioner intends to "develop lesson plans and conduct ground training modules covering aircraft systems, including normal, abnormal, and emergency operations." In an accompanying personal statement submitted with his initial petition, the Petitioner described himself as a large-helicopter pilot in the Brazilian military, proposing to work in the United States as a flight instructor, a consultant to the airline industry that will create policies to retain employees, and an aircraft procurement and acquisition specialist/consultant who will assist aviation companies and the U.S. military in acquiring and modernizing their equipment. Throughout the record, in describing his proposed endeavor, the

[3] In his RFE response, the Petitioner asserted he was also eligible for EB-2 classification as an individual of exceptional ability. However, because he did not claim EB-2 classification on that basis in his initial petition, this material change requires the filing of a new petition. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (standing for the proposition that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements.)

Petitioner emphasizes his experience as a test and maintenance pilot, coursework and licensing credentials expert, creator of aviation safety protocols and consultant and negotiator in military modernization efforts on behalf of the Brazilian military. In summary, the record contains descriptions of the proposed endeavor that include full time employment as a commercial pilot, a flight instructor, an airline industry consultant creating policies to retain employees, and a consultant and negotiator on modernization of aircraft efforts. As such, the proposed endeavor includes several distinct professions with little understanding of how he intends to carry out these distinct endeavors simultaneously.

We note that this petition was filed in October 2020. Post-filing, the Petitioner submitted an "amended professional plan & statement" describing the contract negotiation services he has previously provided in the Brazilian military and stating that he intends to continue that work in the United States. He also created an LLC in [redacted] 2021, which he and his wife intend to operate as members. However, because the LLC was created after the filing of the petition, it constitutes a material change to the petition that requires the filing of a new petition if he wishes for us to consider the endeavor of operating a company. *See Matter of Izummi*, 22 I&N Dec. at 176. Accordingly, our analysis under *Dhanasar's* first prong will focus on the Petitioner's initial claim that his proposed endeavor is to work as a commercial pilot, a flight instructor, and a consultant.

C. First *Dhanasar* Prong: Substantial Merit and National Importance

SCOPS concluded that the endeavor is of substantial merit, but that the Petitioner did not establish his proposed endeavor is of national importance because the endeavor's potential impact would not "significantly reduce the claimed national shortage for pilots." On appeal, the Petitioner asserts SCOPS erroneously focused solely on the endeavor's impact on the U.S.'s pilot labor shortages and ignored other important impacts stemming from his endeavor. Furthermore, the Petitioner urges us to consider key evidence, such as the expert opinion letters, and industry reports and articles that establish his endeavor's national importance.

1. Substantial Merit

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 proposed endeavor to work in the aviation industry is of substantial merit, and we agree.

2. National Importance

The Petitioner maintains that he has established, by a preponderance of the evidence, the national importance of his proposed endeavor, asserting it will substantially benefit the U.S. economy, U.S. societal welfare, and overall national interests due to the widespread importance of the aviation industry. 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. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). For the reasons outlined below, we conclude that the Petitioner has not established, by a preponderance of the evidence, the national importance of his proposed endeavor.

In *Dhanasar* we said that, in determining national importance, the relevant question is not the importance of the field, industry, or profession in which a petitioner may work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We therefore "look for broader implications" of the proposed endeavor, noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* 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.

Here, the Petitioner claims that SCOPS overlooked that his endeavor to train pilots will stimulate economic growth and equip the aviation industry with helicopter and other aircraft pilots that are needed to keep pace with the demand for its services. He further explains that his endeavor is of national importance because the airline industry is worth $23 trillion and continues to grow, thus it is vital to our national economy. However, despite claiming that his endeavor will substantially benefit the U.S. economy, the Petitioner has not shown that his proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States, nor has he shown that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework. To support his assertions, the Petitioner submits industry reports and articles related to the aviation industry's size and growth in relation to the U.S. economy. While the highlighted statistics and information in these documents illustrate the size and economic impact of the aviation industry as a whole, they do not address the potential economic effects of the specific endeavor the Petitioner proposes to undertake. And, as noted, the importance of an endeavor is determined by its potential prospective impact, not by the importance of the industry or occupation it involves. *See Matter of Dhanasar*, 26 I&N Dec. at 889-890.

In addition, the Petitioner claims that the training of helicopter pilots is particularly important to law enforcement agencies at the border and those industries that rely on helicopters for surveillance, and rapid response to victims of climate change, emergency response to roadway accidents, and for investigating criminal activity. The Petitioner further claims that beyond filling a vacant pilot role, his ability to serve as a flight instructor, particularly by training helicopter pilots, will help fill additional vacancies in the industry and set new standards for aviation training by including advanced teaching technologies such as "simulator-based emergency response scenarios." However, the Petitioner does not explain how his specific endeavor to fill one instructional position within such a large industry would have a substantial positive impact on pilot shortages. The Petitioner further notes that because the United States faces a significant national pilot shortage and he will consult the airline industry to create better retention policies, his endeavor is of national importance. However, proposing to work in an occupation with a national shortage or to serve in a consulting capacity in a field that suffers from a shortage of workers is insufficient to demonstrate that an endeavor has national importance. *See generally* USCIS Policy Alert, *supra*, at 13.

The Petitioner asserts his endeavor can impact the economy because he can provide transportation services and train other pilots to provide transportation in the realm of emergency medical services, oil and gas personnel who need to reach offshore platforms, and similar critical needs. He also asserts he will foster innovation and create jobs and enhance U.S. competitiveness by helping to fill critical

pilot positions wherever there is a need and build our critical airline infrastructure. The Petitioner highlights recent FAA system failures to assert that there is an urgent need for more modern and resilient systems. He asserts his endeavor will lead to "increased cost savings, improved asset utilization, and greater profitability for private and public stakeholders" among other positive benefits. However, as above, the Petitioner does not explain how his specific endeavor to fill one instructional position within such a broad array of industries (emergency services, oil and gas, criminal investigation, border security, and airline) would have a sufficiently broad impact on any of these industries to be considered of national importance.

To bolster his assertions, the Petitioner points to his background, education, and experience in the Brazilian military to assert he is capable of carrying out his proposed endeavor and the impacts he describes. In addition, the Petitioner places great emphasis on the contract negotiations he led on behalf of the Brazilian military to acquire a modernized aircraft for Brazil. To establish his credentials, the Petitioner submitted numerous letters of recommendation from other pilots and colleagues in his field attesting to his past exemplary work experience and accomplishments. However, the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor, which is ill-defined, has national importance as contemplated by *Dhanasar*'s first prong.

Finally, we acknowledge the Petitioner's contention that SCOPS did not fully consider the two expert opinion letters he submitted. The first is from a lecturer at [redacted] who explains that because of the U.S. government's decision to fund military spending into aviation procurement, the Petitioner's endeavor is of national importance. However, while the Petitioner has stated he intends to consult the U.S. military as part of his proposed endeavor, he has not explained how he intends to do this work simultaneously with his other distinct roles. Thus, this letter has limited probative value. The second expert letter is from an experienced flight inspector who served with the Petitioner in the Brazilian military. The writer opines that the Petitioner's endeavor is of national importance because the U.S. needs flight instructors, and because the Petitioner's endeavor will help the U.S. military to modernize and acquire new aircraft which is vital to the U.S.'s national security. The writer also cites the U.S. government's investment in resources to acquire new military equipment. Again, as stated above, because the Petitioner has not established how he would carry out these duties simultaneously with his other distinct roles, the letter is of low probative value. For all these reasons, the expert letters are insufficient to establish the national importance of the Petitioner's endeavor. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion).

Overall, the record does not demonstrate that the Petitioner's proposed endeavor would have national or global implications that would reach beyond his potential employers or the student pilots he may instruct. In *Dhanasar*, the petitioner's work as a science teacher was determined not to have national importance because the record did not show how his teaching would impact science education more broadly. *Id.* at 893. Here, too, the Petitioner has not provided sufficient evidence to understand how his proposed endeavor has national or global implications for the aviation field as contemplated by *Dhanasar*.

The record does not contain relevant, probative, or material evidence establishing the Petitioner's proposed endeavor has the potential prospective impact either through its broader implications to its field or its positive economic or social impacts to be of national importance as contemplated by *Dhanasar*.

D. Second and Third *Dhanasar* Prongs

Because a petitioner must establish all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, because the Petitioner has not established eligibility under prong one, we decline to reach and hereby reserve the Petitioner's arguments regarding the remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the Petitioner has not established prong one of the *Dhanasar* analytical framework, he cannot meet all three requisite prongs. For this reason, the Petitioner is not eligible for a discretionary waiver of the job offer requirement in the national interest.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.