U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34875431

Date: DEC. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot in the field of aviation, 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 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 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.

[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.

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 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. His proposed endeavor, as described in his professional plan, is "to continue using [his] expertise and knowledge working in the aviation field… where [he] can help fill the many available Pilot positions" in the United States. In this plan, the Petitioner explains that he can also offer "[his] training expertise to companies, training centers, and flight schools within the U.S. market." 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 work as a pilot in the United States and indicated that "[a]s a flying instructor, [he] can also help alleviate the industry shortage by offering [his] training expertise."

In denying the underlying petition, the Director concluded 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, that he was well positioned to advance the proposed endeavor, and that it would be beneficial to the United States to waive the requirement of a job offer, and thus of a labor certification.

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* E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts that he has provided evidence

[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).

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.

The Petitioner further contests the Director's determination that he had not established eligibility for the underlying EB-2 classification as an individual of exceptional ability. Upon de novo review of the record in its entirety, the Petitioner 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*.[4] As 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 reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility for the underlying EB-2 classification as an individual of exceptional ability. *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).

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Matter of 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 contends that the economic impact of his proposed endeavor demonstrates its national importance and that it "addresses critical areas such as tourism, commerce, job creation, and pilot education." In support of this contention, the Petitioner discusses the importance of aviation as a "rapid worldwide transportation network … mak[ing] it essential for global business by facilitating international trade and tourism" and provides a brief discussion of the economic impact of the travel and tourism industries. The Petitioner also asserts that "as a pilot in Command, he will be the head of an aircraft's crew, and several jobs depend directly on him." The Petitioner therefore argues that his employment will necessitate the hiring of additional crew members. He further asserts that as a commercial pilot, he will command one of the highest salaries in commercial aviation, and that this high salary will generate significant income tax revenue for the United States. However, the Petitioner has not presented evidence indicating that the benefits to the regional or national economy resulting from

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890. In addition, although the Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that this endeavor offers the United States a substantial economic benefit through employment levels or business activity.

The Petitioner argues on appeal that the national importance of his proposed endeavor is demonstrated as it will mitigate the shortage of pilots in the United States through his employment as a pilot and as his proposed endeavor "involves training both experienced pilots and new entrants" into the field of aviation. Numerous articles and industry reports in the record also discuss the shortage of airline pilots in the United States and the roles that flight instructors and foreign pilots play in addressing this shortage. However, we are not persuaded by the Petitioner's argument that his proposed endeavor is of national importance because of 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 asserts on appeal that the proposed endeavor is of national importance as it "aligns with federal transportation and economic policies by enhancing the U.S. aviation workforce" and "contributes to economic stability through improved air travel services." He contends that the endeavor "directly supports government initiatives aimed at maintaining aviation safety and operational efficiency" by training new pilots and enhancing the skill of experienced pilots. The Petitioner does not identify these federal transportation and economic policies or initiatives. Even so, employment in an industry or sector that is the subject of national initiatives is not sufficient, in and of itself, to establish the national importance of a specific endeavor. 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.

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 further 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. at 25 (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. at 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, 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.