U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36710433

Date: FEB. 18, 2025

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 either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The Director dismissed the Petitioner's subsequent motion to reopen.[1] The matter is now before us on appeal.

In these proceedings, 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). 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. Once a petitioner demonstrates eligibility for the EB-2 visa classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for

[1] The Director initially dismissed the motion for untimely filing, but subsequently granted a service motion to consider the Petitioner's motion. After considering the motion to reopen, the Director issued a decision affirming the original denial decision.

adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as 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. EB-2 Visa Classification

The Director did not indicate in either the initial decision or the subsequent motion to reopen decision whether the Petitioner qualifies for the EB-2 classification. As further detailed below, the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar analytical framework, and, therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. We will therefore reserve the issue of the Petitioner's eligibility for the underlying EB-2 classification. 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).

B. National Interest Waiver

Upon de novo review, the Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong.

The first prong, 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. Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to work in the United States as an airline pilot, specifically as either an airline transport pilot first officer or a Pilatus PC12 captain. In addition to pilot flying duties, he intends to be a mentor and instructor for flight safety and pilot trainings, and to collaborate with aviation industry professionals to advance aviation technology and safety, exchange knowledge, and conduct research projects. The Petitioner maintains his work will help mitigate the U.S. shortage of qualified pilots, enhance aviation safety, and support the U.S. economy. We agree with the Director that the Petitioner's endeavor has substantial merit.

The Petitioner's motion and appeal briefs include similar arguments to demonstrate his endeavor is of national importance. The Petitioner stresses that his proposed work as a Pilatus PC12 captain and instructor was not sufficiently considered in the Director's decision, and that he expects to pursue such

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeal in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

position because he has a job offer. To demonstrate the potential broader implications of his proposed work, he stresses his years of professional experience as a pilot and instructor, judging the work of others, use of aviation technologies, piloting aircraft that served communities in emergency and rescue operations, and his aviation qualifications in multiple jurisdictions. With the petition, he submitted recommendation letters from his former employers and colleagues which attest to his aviation knowledge and experience, including general descriptions of his work piloting aircraft, managing flight operations, and conducting flight instructor trainings.

The Petitioner's reliance, however, on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. His professional knowledge and experience 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 that the Petitioner proposes to undertake has national importance under Dhanasar 's first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Id. at 889. While the Petitioner's former employers and colleagues generally attest to his knowledge and experience in his field and that they value his dedication to his work and to improving pilot flying skills for his previous employers, the content of these recommendation letters relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. The Petitioner has not submitted sufficient documentary evidence based on these letters to establish that his proposed work as an aircraft pilot and instructor for an aviation business would impact the aviation field more broadly, rather than benefiting his prospective employer and its clients.

In addition, the evidence in the record does not suggest that the Petitioner's mentoring and training work would extend beyond his prospective employer and have the claimed broader impact on the field of aviation or the U.S. economy. The Petitioner maintains that his proposed mentoring and training of aviation crew will have impacts beyond his employer and would alleviate the shortage of airline pilots. He explains that without flight instructors, entry-level pilots have difficulties meeting their minimum flight hours needed for pilot certifications, which has been an issue contributing to the national pilot shortage. By training and mentoring entry-level pilots, he contends his endeavor would help pilots advance their skills and meet requisite flight experience so that they can become first officers, captains, and instructors, thereby having a broader national impact of increasing the number of qualified pilots and addressing the pilot shortage. In addition to alleviating the shortage of pilots, he claims his endeavor would provide economic benefits to the United States by generating revenue in various industries such as helping businesses in small communities; improving aviation operational costs; and generating salaries for new pilots who would pay taxes. To support his claims, the record includes news articles relating to how the shortage of qualified pilots impacts the U.S. economy; the impact of the shortage of qualified airline pilots on the aviation industry; and proposed U.S. legislation to address the pilot shortage.

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. Similarly, the record does not demonstrate that the Petitioner's work of mentoring and instructing entry-level pilots for an aviation business has the potential to substantially benefit the field of aviation more broadly, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it

has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. at 889.

Moreover, while we recognize the importance of the field of aviation and related careers; merely working in the aviation field as a pilot or as a pilot and flight safety instructor for an aviation business is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. The Petitioner has not established how his proposed endeavor would affect national pilot employment levels or the U.S. economy more broadly consistent with national importance. The industry articles do not discuss how the Petitioner working as a pilot and a pilot instructor for an aviation business will overcome the shortage of pilots and aviation workers in the United States or impact the U.S. economy to the level commensurate with national importance. And if in fact these shortages can be addressed by adding additional qualified professionals like the Petitioner, they would be better addressed through the U.S. Department of Labor's labor certification process.

The Petitioner argues that the Director ignored an opinion letter from a professor at [redacted] which shows his endeavor impacts matters that the government has described as having national importance or is the subject of national initiatives, namely U.S. government legislation relating to investment in U.S. infrastructure, air transportation operating systems, and aviation training.[3] The opinion's focus, however, is on how the aviation industry impacts the U.S. economy, and that the Petitioner's professional knowledge and experience would benefit the aviation industry. As noted above, the importance of an industry or field, or having a shortage of qualified workers in a certain field, is not sufficient to meet the national importance requirement under the Dhanasar framework. Moreover, the Petitioner's professional experience relates to the second prong of the Dhanasar framework. See id. at 890. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. Id.

Beyond general assertions, the Petitioner has not demonstrated that the work he proposes to undertake offers the claimed broader implications commensurate with national importance. His claims depend on numerous factors, and he did not offer a sufficiently direct evidentiary tie between his proposed work piloting aircraft, instructing pilots, and conducting flight safety training and its claimed impact on his field, the U.S. economy, or U.S. national initiatives. The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the

[3] With the appeal, the Petitioner includes documents submitted with his initial petition and with his request for evidence response. He also offers two new opinion letters to show his eligibility for the national interest waiver, explaining that the initial opinion letter from the professor at [redacted] was inappropriately submitted by his former attorney without the Petitioner having had a chance to review the opinion. The Petitioner indicates the initial opinion is not from an aviation industry expert, whereas these new opinion letters are from such experts and should be considered on appeal. We, however, will not consider this new evidence for the first time on appeal, as it was not presented to the Director after the Petitioner had an opportunity to do so with his response to the Director's request for evidence. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Statements and claims alone are not sufficient to demonstrate the national importance of his proposed endeavor. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner's burden of proof. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998). While the Petitioner expresses his desire to contribute to the United States and the field of aviation, he has not established with specific, probative evidence that his endeavor has the claimed potential to extend beyond his prospective employer and clients to have broader impact as contemplated under Dhanasar. As such, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility under the second and third prongs of Dhanasar. See INS v. Bagamasbad, 429 U.S. at 25.

III. CONCLUSION

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 petition will remain denied.

ORDER: The appeal is dismissed.