U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34557054

Date: JAN. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a 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, 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 Petitioner did not establish that the proposed endeavor has national importance and therefore he is ineligible for a national interest waiver. 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.

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. *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,[1] 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

[1] *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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

In the denial decision, the Director did not analyze and determine whether the Petitioner is a member of the professions holding an advanced degree, noting it is questionable whether a degree is required for his occupation. The Director stated this issue would only be discussed if necessary. Additionally, the Director did not analyze and determine whether the Petitioner is an individual of exceptional ability. Rather, the Director's decision focused on whether the Petitioner met the requirements for a national interest waiver. The Director found that the Petitioner did not establish that he met the national interest waiver requirements. Specifically, while the Director determined that the proposed endeavor has substantial merit, the Director did not find that the proposed endeavor has national importance. Based on this finding, the Director found that no purpose would be served in analyzing whether the Petitioner is well-positioned to advance the proposed endeavor and whether waiving the job offer requirement would benefit the United States.

We find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. In making our decision we have reviewed the record which includes, but is not limited to, statements from the Petitioner, articles and industry reports, certificates and licenses, a resume, professional and educational records, work experience and recommendation letters, and photographs.

With respect to his proposed endeavor, the Petitioner stated on his petition that he would "[p]ilot and navigate the flight of fixed-wing aircraft(s) on nonscheduled air carrier routes, or helicopters." In response to a request for evidence, the Petitioner further stated he will work as a flight instructor and train other pilots. He stated he would apply to the major operators of the Boeing 737, including American Airlines, Delta, United, and Southwest.

The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the record establishes the Petitioner's proposed endeavor has substantial merit. We also agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Director listed evidence submitted by the Petitioner and provided a summary of the relevant law related to national importance. Next, the Director mentioned the Petitioner's reference to the importance of his field, but that the focus of national importance analysis is on the proposed endeavor and not the importance of the field, industry, or profession he would work in. The Director then addressed the Petitioner's claim that the proposed endeavor has national importance due to the shortage of pilots, and found there is no indication the proposed endeavor would significantly reduce a claimed national shortage and that shortages of qualified workers is already addressed through the labor certification process. The Director also noted the proposed endeavor would not introduce new training processes or methodologies, influence the broader sector, have significant potential to employ U.S. workers, or have substantial positive economic effects, particularly in an economically depressed

area. The Director acknowledged letters in support of the Petitioner. The Director found they were not supported by evidence showing broader implications of his proposed endeavor, and furthermore they generally relate to the second *Dhanasar* prong. Finally, the Director determined that the Petitioner did not establish the proposed endeavor sufficiently extends beyond an organization and its clients or the individuals he intends to serve to impact the industry or field more broadly, or that the proposed endeavor has global or national implications. Based on the above analysis, the Director determined that the proposed endeavor lacks national importance.

On appeal, the Petitioner lists previously submitted evidence and asserts that the Director failed to consider and properly weigh all the evidence. Specifically, the Petitioner claims the evidence establishes the positive impact that the proposed endeavor would have on the aviation industry. The Petitioner states that evidence that he will train new pilots was ignored by the Director. He mentions that his work as a flight instructor will impact the travel industry for decades, as he will work for four decades and potentially train thousands of new pilots. He claims that the Director ignored how this will influence the broader sector and impact or significantly reduce a national shortage in the aviation industry. Finally, the Petitioner asserts that the Director gave no rational explanation as to how training thousands of pilots for the next 40 years lacks national importance or how it lacks economic impact.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

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. While the Petitioner's statements reflect his intention to provide pilot and instructor services in the aviation industry, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the 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. Similarly, the Petitioner would be instructing other individuals how to fly, but the record does not establish he would be impacting his field more broadly. As mentioned by the Director, the proposed endeavor does not introduce new training processes or methodologies. The record also lacks sufficient detail about the instruction component of the proposed endeavor in order to understand how he would train thousands of pilots. Although the Petitioner claims his proposed endeavor would have an economic impact, the record does not include sufficient evidence establishing that it has significant potential to employ U.S. workers or that benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his future employer and individuals he would instruct to impact his field,

the aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

Finally, the Petitioner indicates his proposed endeavor would significantly reduce a national shortage in the aviation industry. However, the alleged shortage of occupations or occupational skills does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers, as mentioned by the Director, are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not demonstrated eligibility for a national interest waiver. As this issue is dispositive of the appeal, and the Director did not make a finding whether the Petitioner is eligible for EB-2 classification, whether the Petitioner is well-positioned to advance the proposed endeavor, and whether waiving the job offer requirement would benefit the United States, we will not address these issues. *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).

ORDER: The appeal is dismissed.