U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31282250

Date: JUL. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aviation maintenance specialist, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualified as an individual of exceptional ability, nor did she demonstrate that the proposed endeavor was of national importance or that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. The matter is now before us on appeal. 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

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 a degree of expertise significantly above that ordinarily encountered in the field.

[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 aliens 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 demonstrates eligibility for the underlying EB-2 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. 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.

## II. EXCEPTIONAL ABILITY

The Petitioner claimed eligibility for the EB-2 immigrant classification as an individual of exceptional ability. However, because we conclude that she is not eligible for, and does not merit as a matter of discretion, a national interest waiver, and this determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of her eligibility as an individual of exceptional ability. *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).

## III. NATIONAL INTEREST WAIVER

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

### A. Substantial Merit and National Importance

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

The appeal brief states that the Petitioner's aviation maintenance consultancy business is nationally important because it will "have substantial positive economic effects (generate revenue and directly /

[3] *See also 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 to be discretionary in nature).

indirectly create jobs for U.S. workers) and will directly improve industry performance." The evidence provided does not demonstrate that this specific endeavor is of national importance.

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." *See 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 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. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the potential prospective impact of her work. 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. 26 I&N Dec. at 893.

The Petitioner argues on appeal that her proposed work is nationally important because it will support "the air transportation industry in the U.S., improve U.S. air safety, improve airplane quality, and promote knowledge transfer in the U.S." The brief explains that the business will provide consulting services and conduct trainings on aviation maintenance. Yet the brief does not explain how the business would impact the overall field more broadly beyond its clients on the level of national importance. Besides generally explaining what the company will do, the brief focuses on the importance of the commercial aviation field and the country's need for aviation maintenance technicians to support its argument on national importance. This concentration ignores the requirements we set forth in *Dhanasar*. It is not the importance of the field that determines an endeavor's national importance, but rather how the specific endeavor will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889. The brief neglects to explain how the business's consulting and training services will affect the overall aviation maintenance field at a nationally important level.

The record does not sufficiently demonstrate national importance either.[4] In support of the Petitioner's claim of national importance, the Petitioner submitted a personal statement, a business plan, and several informational articles. The personal statement primarily discusses the Petitioner's general plan to provide consulting and training on aircraft maintenance and does not address how the endeavor will impact the overall field more broadly beyond its clients. The articles submitted discuss the importance of the aviation industry, aircraft maintenance, the national debt, and the shortage of aircraft mechanics. These articles are of little evidentiary value as they do not address the Petitioner's specific proposed endeavor or how it would have broad implications in the aviation maintenance field in a way that implicates national importance.

Moreover, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. An endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, may have

[4] While we may not discuss every document submitted, we have reviewed and considered each one.

national importance. *Dhanasar*, 26 I&N Dec. at 890. Here, however, the business plan does not adequately support these projections of job and revenue creation.

The Petitioner's business plan anticipates that the Petitioner's company will reach a total of six employees and create the equivalent of 12 to 14 indirect jobs by year five. It further predicts tax payments growing from $26,388 in year one to $101,445 in year five. She also projected generating $162,000 in total sales in year one, increasing to $603,000 in year five. Nonetheless, the plan does not sufficiently explain how these forecasts were calculated, or adequately clarify how these projections will be realized, nor does the record contain evidence to support the business plan's financial projections. The preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is probably true, where the determination of truth is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, truth is to be determined not by the quantity of evidence alone but by its quality. *See id.* Here, the lack of supporting details detracts from the credibility and probative value of the business plan.

Even if we assumed all the projections in the business plan were accurate, the record lacks evidence demonstrating that its impact would be nationally important. The Petitioner's appeal brief contends that the proposed endeavor will have a substantial economic impact by generating tax revenue "generating revenues within the country and creating employment opportunities." Nevertheless, the Petitioner did not provide documentation to support these statements that the company will result in substantial economic growth on the level of national importance. The record does not illustrate how creating 18 to 20 jobs and generating the revenue and taxes projected in the business plan, would have substantial positive economic effects on the level of national importance. The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has therefore not provided sufficient information and evidence to demonstrate the prospective impact of her proposed endeavor rises to the level of national importance.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend beyond her clients to affect the region or nation more broadly. 26 I&N Dec. at 893. She has not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.