U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31763066

Date: JUL. 09, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the National Benefits Center denied the petition, concluding that the record did not establish that the Petitioner was qualified for classification as a member of the professions holding an advanced degree or 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 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.

A United States 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). In addition, "profession" is defined as of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Furthermore, "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). 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.

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: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner, a pilot and flight instructor, seeks an employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. The Director denied the underlying petition, concluding that the Petitioner had not established his qualification for the underlying EB-2 classification either as an advanced degree professional or as an individual of exceptional ability. The Director further determined that while the Petitioner had established that his proposed endeavor had substantial merit, 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 requirements of a job offer and thus of a labor certification. For these reasons the Director concluded that the Petitioner had not established his eligibility for a national interest waiver as a matter of discretion.

On appeal, the Petitioner contends that the Director denied the petition "in its entirety, supposedly due to abandonment for failure to timely respond" to a notice of intent to deny (NOID) issued by the Director.[4] He submits a copy of the evidence submitted with his NOID response for consideration and asserts his eligibility for the classification sought. Upon de novo review of the record in its entirety, the Petitioner has not sufficiently demonstrated that his proposed endeavor has both

[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.

[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).

[4] Although the Director advised the Petitioner that USCIS did not receive a timely response to the NOID and thus only considered evidence initially submitted with the underlying petition, the record does not reflect that the Director denied the petition for abandonment.

substantial merit and national importance under the first prong of *Dhanasar*. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not provided adequate reasons or evidence on appeal to overcome the Director's determination that he is eligible for a national interest waiver as a matter of discretion. Since this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue regarding whether the Petitioner qualifies for the underlying EB-2 classification; we additionally 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. 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 D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

To establish eligibility for a national interest waiver under the first prong of the *Dhanasar* framework, the Petitioner must establish that his proposed endeavor has both substantial merit and national importance. The Director concluded, and we agree, that the Petitioner has established the substantial merit of his proposed endeavor. For the reasons discussed below, however, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

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. *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." *Dhanasar*, 26 I&N Dec. at 889. 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's proposed endeavor, as described in the personal statement submitted with his initial petition, is "to perform as a [p]ilot and provide his specialized services in flight command & operations, and flight instruction" and to "surpass the accomplishments of typical pilots by introducing innovations in the aviation field through the adoption of special operations and advanced flight planning approaches." Regarding flight command and operations, the Petitioner explains that "[b]y demonstrating proficiency in operating multiple aircraft, [he] will optimize flight efficiency to reduce operating costs and carbon emissions, prioritize safety procedures, continuously monitor flights, meticulously plan routes, adapt to operational changes and strictly comply with flight regulations." Relating to flight instruction, the Petitioner clarifies that his proposed endeavor will: "give top priority to creating a well-rounded pilot education program that includes theoretical knowledge, practical skills, and a deep grasp of aviation regulations and procedures" and focus on "engaging students through interactive teaching techniques, case studies, and real-life scenarios to establish a solid base of aviation expertise. The aim is to introduce an engaging and all-encompassing curriculum that

equips students with the fundamental theoretical and practical skills required for a successful career in aviation."

With his NOID response, the Petitioner provides an updated professional plan indicating that he also intends to provide cargo operations services as part of his proposed endeavor. With these cargo services he will "oversee carrying shipments containing a large volume of commercial products and specialized cargo, such as flammable, explosive, radioactive materials, utilities, livestock, perishable cargo, medical supplies, and different types of dangerous goods." The Petitioner also explains that "[h]e will use his extensive knowledge of dangerous goods and proper handling of explosives, flammable, corrosive liquids, and radioactive materials to ensure safe and timely delivery" and "contribute to the global economy by facilitating the movement of supplies that are essential for various industries, especially during crises like the COVID-19 pandemic."

The Petitioner contends that the proposed endeavor "has national or even global implications," asserting that "[it] is well-known fact that the best (if not unique) way to estimate the prospective impact of one's work is by evaluating the individual's past achievements" and that "his contributions have rendered impressive results." He notes his "wealth of flight experience" as a pilot and states that his role as a flight instructor with a commercial airline in Brazil "underscores his experience, with licenses and qualifications that cover a spectrum of aviation regulations and procedures." He argues that his "past contributions and achievements demonstrate that he has made and continues to make contributions of significant impact - including training pilots for the [redacted] performing special operations in challenging airports, conducting cargo flights with critical goods and medical supplies, and disseminating advanced methodologies." The Petitioner also provides an updated resume to demonstrate these contributions and skills. The Petitioner's skills, knowledge, and prior work in his field, however, 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 he proposes to undertake has national importance under *Dhanasar*'s first prong.

The Petitioner also argues that through his proposed endeavor's focus on safety and efficiency, it will enhance the standards of the American aviation industry and will also contribute to societal welfare. In his updated professional plan, the Petitioner states that as a pilot, and through his creation of computerized flight plans, navigation during flights, and crew coordination and leadership as a pilot he will ensure the safety of U.S. aviation. The Petitioner also asserts that through his "expertise and commitment to safety" as an aircraft pilot, he will contribute to societal welfare by instilling confidence in airline passengers, "enabling them to travel with peace of mind." Referring to the environmental benefits of efficient flight planning and adherence to strict safety guidelines, the Petitioner contends that his proposed endeavor will also minimize the environmental impacts of air travel, resulting in a contribution to societal welfare.

The Petitioner also contends that the national importance of his endeavor will be seen as he trains and develops new crew members and pilots. In the updated professional plan, the Petitioner describes the training techniques and assessments he intends to employ and argues that, through the application of his skills as a pilot and flight instructor, he will "benefit the aviation industry by providing innovative training that can encourage safer flying, increase the qualification of new pilots, and contribute to the technical and cultural enrichment of the American aviation sector." Finally, in this plan the Petitioner

indicates that his intent to "assist in rescue operations, emergency evacuation, and medical deliveries" is evidence of the proposed endeavor's national impact.

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 his services as an airplane and commercial pilot, and as a flight instructor to his future clientele, 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the American aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner further argues that the national importance of his proposed endeavor is demonstrated by increasing demand for airline and commercial pilots. He asserts that future demand for pilots will be supported by "the post-pandemic expansion of hybrid and remote work arrangements." The Petitioner cites to statistics showing demand for the airline and commercial pilot occupations to demonstrate future demand in these occupations. He contends that his proposed endeavor will also contribute to a reduction of future pilot shortages. We are not persuaded by the Petitioner's argument that his proposed endeavor is of national importance because of increased demand and 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.

In addition, the Petitioner asserts that the national significance of his proposed endeavor is shown by its potential to generate positive economic impacts and employment opportunities in the United States. He contends that "[b]y entering the aviation industry and contributing to the growth and efficiency of air transport, [he] will support the employment of U.S. workers, stimulate economic activity, and enhance the country's overall GDP." Referencing a 2021 report on the economic contributions of civil aviation, the Petitioner states that "in 2018, every $1 of output produced and every job created in the civil aviation sector triggered … 1.66 jobs across various industries." Therefore, according to the Petitioner, if he "trains or licenses a minimum of 250 pilots annually for employment in the civil aviation field, he would contribute to the creation of at least 665 new jobs per year, taking into account the multiplier effect." However, the Petitioner does not offer the basis for this number of trainees or an explanation for how he intends to train or license this number of pilots. 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 Florida or the United States a substantial economic benefit through employment levels or business activity. Further, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner also contends that his proposed endeavor has employment and economic impacts that "extend globally." In support of this contention, he discusses the air transportation industry and its global economic contributions. However, the Petitioner does not offer evidence to show how his proposed endeavor would impact the air transportation industry or otherwise would operate on such a

scale as to rise to a 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field or the U.S. economy more broadly at a level commensurate with national importance.

III. CONCLUSION

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. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that 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 reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.