U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650398

Date: JULY 10, 2024

Appeal of Texas 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 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 qualified for classification as an individual of exceptional ability, but that he had not established 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.

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. 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,[1] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;

[1] *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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 Director found that the Petitioner qualifies as an individual of exceptional ability. 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.[2] For the reasons discussed below, 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.

With respect to his proposed endeavor, the Petitioner indicated that he plans to work "as an Aircraft Mechanic and Service Technician, providing consulting services through my own firm to private owners, maintenance shops, executive airlines, and flight simulator companies." He asserted that his "focus will be on working first with services in the field of technical support and maintenance of ATR Series aircraft, the whole line of Embraer aircraft," and various helicopters (Leonardo, Airbus, and Sikorsky). The Petitioner further stated that his undertaking will involve "aircraft maintenance" and "personnel training and enhancement."

In addition, the Petitioner submitted the business plan for his company, [redacted] This business plan includes industry and market analyses, information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of the Petitioner's education and work experience, and a description of company personnel. Regarding future staffing, the Petitioner's business plan anticipates that his company will employ 5 personnel in year one, 8 in year two, 10 in year three, 15 in year four, and 16 in year five, but he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his plan offers revenue projections of $925,000 in year one, $1,305,000 in year two, $1,610,000 in year three, $2,454,000 in year four, and $2,716,000 in year five, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The record includes information about White House actions to attract STEM talent and to strengthen our economy and competitiveness, the value of small business to the U.S. economy, small businesses as drivers of the American economy, small business growth under the Biden-Harris Administration, and the projected shortage of aircraft maintenance workers in North America. In addition, the Petitioner provided articles discussing the White House's American Jobs Plan, the Biden-Harris Administration's priorities, President Biden's remarks relating to promoting competition in the American economy and helping small businesses, the Federal Government's public-private mobilization effort to distribute CARES Act funding, and the White House's American Rescue Plan. He also submitted information about the value of air transport in the United States, critical infrastructure sectors, the pilot and aviation technician job outlook, flight cancellations and delays attributable to an industry-wide shortage of aircraft technicians, and the U.S. aircraft mechanic shortage.

[2] The Director determined that the Petitioner did not meet the first and third prongs of the *Dhanasar* analytical framework.

We agree with the Director that the submitted documentation establishes his endeavor has substantial merit. In determining national importance, however, the relevant question is not the overall importance of U.S. small businesses to our economy, the value of the industry in which the individual will work, or whether that industry is facing labor shortages; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner must still demonstrate the potential prospective impact of his specific proposed endeavor.

The Petitioner offered letters of support from L-A-M-, J-L-F-F-, J-V-S-B-, D-N-, G-M-P-, F-C-V-, C-S-P-S-, A-H-, A-P-, P-R-A-, and A-P-J- discussing his aircraft maintenance capabilities and experience. In addition, he presented a letter from P-B- reflecting interest in his consulting services. The Petitioner's skills, knowledge, and prior work in his field, as well as interest from potential customers, 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 provided an "Expert Opinion Letter" from Dr. M-N-C-, Associate Professor of Aerospace at [redacted], in support of his national interest waiver. Dr. M-N-C- contends that the Petitioner's proposed work is of national importance because his generic occupation of aircraft mechanic and the aviation industry stand to contribute to our nation's economy and national security. Again, the issue here is not the national importance of the field, industry, or profession in which the individual will work; rather we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. The advisory opinion does not demonstrate how the Petitioner's day-to-day management of his company's operations and performance of aircraft maintenance services for clients as contemplated by his proposed endeavor rise to a level of national importance. The letter from Dr. M-N-C- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner's specific proposed work offers broader implications in his industry or substantial positive economic effects for our nation that are indicative of its national importance.

In the decision denying the petition, the Director determined that the Petitioner had not established the national importance of his proposed endeavor. The Director stated that the Petitioner had not demonstrated his undertaking stands to sufficiently extend beyond his company "to impact the industry or the U.S. economy more broadly at a level commensurate with national importance." The Director also concluded the Petitioner had not shown that his proposed endeavor offers "substantial positive economic effects."

On appeal, the Petitioner contends that his "proposed endeavor impacts a matter that government entities have described as having national importance and is the subject of national initiatives." He points to data from the U.S. Small Business Administration indicating that small businesses are drivers of the U.S. economy. The Petitioner also cites to information from the White House relating to attracting STEM talent and to strengthening our country's economy and competitiveness. In addition, the Petitioner references the USCIS Policy Manual update for "National Interest Waivers" from January 2022 asserting that his proposed endeavor is subject to the "special considerations for endeavors in STEM fields." While the policy update that the Petitioner references explains how the *Dhanasar* framework

can apply to STEM fields, the Petitioner must still demonstrate that his specific STEM endeavor has national importance.[3]

The Petitioner, however, has not provided evidence demonstrating that his proposed aviation maintenance and consulting work would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in his industry or to generate substantial positive economic effects in the region where his company will operate or in other parts of the United States.

The Petitioner further argues that "there is a shortage of aircraft mechanics in the U.S." and that his undertaking will address this shortage through "offering training and upskilling new aviation professionals." While the Petitioner claims that his proposed endeavor will serve our country by "overcoming the existing shortages of aviation professionals," he has not demonstrated that his undertaking stands to impact his field or industry more broadly beyond the trainees associated with his particular company and its consulting projects.[4] Moreover, we are not persuaded by the argument that the Petitioner's proposed endeavor has national importance due to the shortage of workers in his field. Here, the Petitioner has not established that his proposed endeavor stands to impact or 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.

Additionally, the Petitioner asserts that his work has national importance because it stands to create "direct and indirect jobs for U.S. workers" and offers "benefits to an economically depressed area." He claims that his "company will be located in a place with regional demand for its services and in areas considered underserved communities, also called opportunity zones." The Petitioner's claim that his endeavor is nationally important because his company plans to operate in underserved communities is not persuasive. While the Petitioner states that his company "will be headquartered in [redacted] Florida, with an expansion plan to Central Florida [redacted] area)," he has not specifically identified a physical location for his proposed business. Accordingly, the Petitioner has not shown that his business will operate in an opportunity zone. Nor does the evidence support the Petitioner's claim that his undertaking "stands to impact the regional and national population at a level consistent with having national importance."

In determining national importance, the relevant question is not the importance of the field, 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

[3] "With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance." *See* 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policy-manual.

[4] Likewise, 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.

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 his work. While the Petitioner's statements reflect his intention to provide aircraft maintenance and consulting services to his company's future clients, 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 aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, 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*. *Id.* 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 his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity.

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. In addition, regarding his eligibility under *Dhanasar's* third prong, the Petitioner's appeal brief does not offer specific arguments contesting the Director's determination on this issue. Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

III. CONCLUSION

As the Petitioner has not met the requisite first and third prongs 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.