U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33089922

Date: JUL. 31, 2024

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 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 he is an individual of exceptional ability or that a waiver of the required job offer and 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.[1] Section 203(b)(2)(B)(i) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[2] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

[1] The plain language of section 203(b)(2)(B)(i) and the governing regulation refer only to exceptional ability in the sciences, arts, or business, which does not include aviation. As a pilot and aviation instructor, the Petitioner may not be qualified for EB-2 classification, because he has not established that aviation is a science, art, or business-related field, as required by the statute. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence). However, because the Petitioner has not been put on notice of the deficiency in the record of proceedings, we will not dismiss the appeal on this basis.

[2] 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.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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.

Id. at 889.

II. ANALYSIS

The Petitioner filed this petition on February 10, 2023. After analyzing the initial evidence, the Director issued a request for evidence (RFE) on May 31, 2023, noting the deficiencies in the record, to which the Petitioner timely responded. The Director denied the petition concluding the Petitioner did not establish that he is eligible for EB-2 classification, as an individual of exceptional ability in the sciences, arts, or business.[4] In addition, the Director determined his proposed endeavor did not meet any of the three *Dhanasar* prongs to establish his eligibility for a national interest waiver. Because a petitioner must establish that they meet all three prongs of the *Dhanasar* framework to obtain a national interest waiver, if even one of the prongs is not established, a petitioner is ineligible for this waiver. Accordingly, we will analyze the Petitioner's evidence under prong one and, as explained below, because he has not established his eligibility under that prong, we decline to reach and hereby reserve the Petitioner's arguments regarding the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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). Similarly, we reserve review of the Petitioner's evidence and contentions related to his eligibility, as an individual of exceptional ability, for EB-2 classification. *Id.*

A. Substantial Merit and National Importance of the Proposed Endeavor

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." *Id.* at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally

[3] *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).

[4] The Petitioner did not claim to qualify for EB-2 classification as an advanced degree professional.

involves, but what types of work the person proposes to undertake specifically within that occupation. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. *Id.* As such, we will first identify the Petitioner's endeavor as shown in the record. Then, we will evaluate the Petitioner's evidence in support of the endeavor's substantial merit and national importance.

In evaluating his proposed endeavor, we consider his statement on appeal, dated March 19, 2024, and his "Letter of Intent" submitted in response to the Director's RFE, dated February 1, 2023. In the former, he explains that he has worked as a pilot and aviation instructor manager since 2010. In his latter statement, the Petitioner describes his current work as a flight standards manager at [redacted] where his job title is pilot in command. The Petitioner also provided an undated statement with his RFE response, in which he explains that he plans to work as a pilot transporting cargo and people, lists various airlines that could serve as his employers in the United States, and explains the professional duties and responsibility of his position as a pilot and flight standards manager. On appeal, he provides a job offer letter from [redacted] a company located in Florida, for which he "will be responsible for the ground and simulator training for the pilots that want to obtain the Airbus A320 type rating and also the [Federal Aviation Administration (FAA) Airline Transport Pilot (ATP)] license that is required to join a US airline." The Petitioner currently has a valid ATP license issued by the FAA, which permits him to transport people and cargo. These statements indicate that the Petitioner's proposed endeavor is to work as a pilot and aviation instructor in the United States. As such, based on the totality of the relevant evidence, we agree with the Director that the Petitioner has established, by a preponderance of the evidence, that his proposed endeavor has substantial merit. Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

Throughout the proceedings, the Petitioner has maintained that his proposed endeavor is of national importance because of the documented shortage of pilots, which is affecting the airline industry. First, we note that shortages of qualified workers in a field are directly addressed by the U.S. Department of Labor through the labor certification process. Thus, labor shortages, in general, are insufficient to establish an endeavor is of national importance. The Petitioner provides background information and reports, news articles, and a research journal article to emphasize how the pilot shortage is affecting public perception of airline safety, airline reliability, and travel and tourism. He also provides evidence to show that the Biden Administration awarded close to $3 billion to improve airport infrastructure and the overall airline industry after the COVID-19 pandemic. This information establishes the importance of the airline industry, and highlights the shortage of pilots, however it does not establish the national importance of the work of one individual pilot or aviation instructor. The burden is on each petitioner to show that a given proposed endeavor has "sufficiently broad potential implications to demonstrate national importance." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(2); *and see Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence). Accordingly, while these documents provide context to establish the substantial merit of the Petitioner's proposed endeavor, they do not establish its national importance.

The Petitioner submitted an expert opinion letter from the Director of Aviation Programs at the [redacted] who opined that the proposed endeavor is of national importance for three reasons: 1) it supports government goals related to aviation; 2) the training of new pilots is vital to addressing the pilot shortage; and 3) the endeavor will stimulate the economy by increasing the capacity for air transportation. These general assertions relate primarily to the national importance of the aviation field, but they do not attest to the broad potential implications of the Petitioner's proposed endeavor. In *Dhanasar*, we acknowledged the importance of STEM education, but concluded: "While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the petitioner would be engaged in activities that would impact the field of STEM education more broadly." *Id.* at 893. Similarly, here, the Petitioner's endeavor to work as a pilot and aviation instructor has substantial merit in relation to the U.S. aviation field, however, the actual activities he would be engaged in would not impact the field of aviation at a level commensurate with national importance. It is not the field or industry but the endeavor itself that the individual will carry out that must be shown to be of national importance. Therefore, because of these deficiencies, the expert opinion does not help to establish the national importance of the Petitioner's proposed endeavor. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (standing for the proposition that we may, in our discretion, use opinion statements submitted by a petitioner as advisory but, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that opinion); *see also Matter of Chawathe*, 25 I&N Dec. at 375-76.

On appeal, the Petitioner asserts that his endeavor extends beyond his job duties because he would train and hire new pilots so that his endeavor would have "significant potential to employ U.S. workers" and contribute "to the cultivation of a skilled workforce essential for sustaining the operational integrity of the aviation industry." He asserts the Director overlooked the link between training new pilots and *Dhanasar's* emphasis on endeavors that have the "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 890. Here, the Petitioner's emphasis on hiring pilots is contrary to the duties he describes he would carry out in his personal statements, as well as in the job offer letter he provides, which explains he would be hired as an aviation instructor, and not in a hiring capacity. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that any inconsistencies in a petitioner's evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition). Arguably, while the training of new pilots would lead to an airline's ability to hire them, that link is too tenuous to support the Petitioner's assertion that he would be engaged in hiring pilots at a level that would reduce the pilot shortage, and thus have "significant potential to employ U.S. workers." *Dhanasar,* 26 I&N Dec. at 890; *see also Matter of Chawathe*, 25 I&N Dec. at 375-76. In addition, the Petitioner has not established that the number of pilots he would train would lead to enough new pilots to bolster his claim of sustaining the "operational integrity of the aviation industry." *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner further contends that his proposed endeavor will "foster economic productivity and societal well-being by bolstering the efficiency and reliability of air travel," and support the "operational efficiency and global competitiveness of U.S. airlines," and that this means his endeavor has positive national and global implications. He also asserts that his endeavor will have broad social welfare implications because it addresses the pilot shortage and enhances public perception of airline safety and confidence in our air travel, which improves the U.S.'s national security. As stated above,

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 specific endeavor that the foreign national proposes to undertake." *Dhanasar,* 26 I&N Dec. at 889. Here, the Petitioner's assertions rely on the importance of the aviation industry or field rather than demonstrating the national importance of his pilot and instructor services and he does not provide any evidence to establish how his endeavor will promote economic productivity. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. For example, the Petitioner does not provide specific evidence to establish his work as a pilot and instructor would have an economic impact, create jobs, or that the benefits to his employer or the regional economy resulting would reach the level of "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890; *see also Matter of Chaw*athe, 25 I&N Dec. at 376. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to the Petitioner's work, the record does not show that benefits to his employer or the regional economy to support his claims. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

Finally, the Petitioner emphasizes that his "extensive experience as an FAA licensed [ATP], coupled with his roles as a Flight Standard and Training Manager, underscores his capacity to contribute." However, the Petitioner's work experience and qualifications to be a pilot and aviation instructor in the United States are not relevant to our first prong analysis, but instead are considered as part of our second prong analysis where we look to see if a petitioner has established, they are well-positioned to carry out their endeavor, and consider factors such as their "education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals." *Dhanasar,* 26 I&N Dec. at 890.

We acknowledge the Petitioner's assertion that being an aviation instructor would support the pipeline of new pilots. However, this role, while important, does not rise to the level of national importance as contemplated in *Dhanasar*. Individual pilots who he might train would certainly benefit from his services, however, the effects of this training are not sufficiently broad to establish his role's national importance. As stated above, 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, here, the record does not establish the Petitioner's proposed endeavor stands to sufficiently extend beyond potential students or his employers to impact the field of aviation or the U.S. economy more broadly at a level commensurate with national importance.

Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework because he has not established its national importance.

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.