U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31456309

Date: JUN. 12, 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 a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not demonstrate that: 1) he qualified for the EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability; or 2) he merited a national interest waiver, as a matter of discretion, under the three-prong framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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

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.

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

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded that the Petitioner qualified as an individual of exceptional ability. The remaining issue to be determined on appeal is whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner described his proposed endeavor in response to a request for evidence as follows:

> The Petitioner['s] **endeavor** in the United States is **to work as an airline pilot for U.S. companies/airlines needing to hire pilots to meet up with demand.** Additionally, as a senior-level pilot and experienced flight instructor, **he would also work as a flight instructor to train and prepare the next generation of pilots** . . . .
>
> The Petitioner's undertaking **has both substantial merit and is of significant national importance** because it will benefit the overall aviation industry and, consequently, the economy of the United States. **The aviation industry is essential to the viability of the U.S. economy** because, among other things, it facilitates commerce and economic growth. The aviation industry accounts for more than **5% of our Gross Domestic Product** (GDP), contributes **$1.8 trillion in total economic activity,** and **supports nearly 11 million jobs** . . . . According to the Federal Aviation Administration, **"[t]he nation's economic success depends on having a vibrant civil aviation industry."** Additionally, **the civil aviation industry provides services to other U.S. industries and contributes to people's quality of life** (i.e., the American people) in several other ways that are not captured in standard economic indicators. Moreover, his undertaking is of national importance **as it will also contribute to humanitarian aid and national security** of the United States. As such, [the Petitioner's] undertaking has much broader implications. [Emphasis in the original.]

The Director concluded that, while the Petitioner's proposed endeavor had substantial merit, he did not demonstrate his proposed endeavor had national importance. On appeal, the Petitioner asserts that the Director erred in their conclusion and contends the provided evidence demonstrates the national importance of his endeavor. For the reasons discussed below, we agree with the Director that the

[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 to be discretionary in nature).

Petitioner has not sufficiently demonstrated the national importance of his endeavor to establish his eligibility under the first prong of the *Dhanasar* analytical framework.

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.

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. Further, 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.

On appeal, the Petitioner points to documentation provided in support of the petition discussing air transport market trends and estimated growth projections. He also emphasizes documentation discussing pilot shortages and the potential implications of such shortages. The Petitioner further reiterates his assertion that his employment as a pilot and instructor in the United States "will reduce flight cancellations and delays" and "alleviate the pilot shortage that hinders the air transport market's ability to grow." In addition, the Petitioner highlights submitted evidence discussing the economic footprint of air travel and asserts that his proposed endeavor will contribute to diversity within the industry and facilitate trade and commerce.

The provided evidence and the Petitioner's assertions, however, do not explain how his intention to fill a single position as a pilot or to work as an instructor would alleviate an asserted national shortage of pilots. For instance, the Petitioner states on appeal that "a shortage of about 29,000 pilots is expected in the next ten years," but he provides little indication how his employment as a pilot and instructor would have a national impact on this very large, claimed national shortage. The Petitioner's contention that his proposed work would have a potential positive impact on the number of pilots in the United States does not demonstrate a likely potential prospective national impact on the field of aviation or the airline industry. He did not provide sufficient evidence to show that his individual employment in the field would impact widespread issues such as flight timeliness and air travel market growth. The burden is on the Petitioner to provide evidence to support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the importance of a nationwide issue does not confer national importance on the Petitioner's proposed endeavor to work as a pilot or an instructor. Again, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889.

On appeal, the Petitioner asserts that he has established how his proposed endeavor would have substantial economic effects "by facilitating integration into the global economy, as well as increasing commerce and economic growth." However, the Petitioner has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. Further, it is not clear how the Petitioner's employment as a flight instructor in the United States would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. For example, the Petitioner asserts on appeal that the air transport industry stands to "contribute 15.5 million direct jobs and $1.5 trillion in GDP (gross domestic product) to the world economy," yet he submitted little explanation for how the employment of one pilot and instructor would have a national impact on such a large industry.

While the Petitioner links his proposed endeavor's national importance to an asserted shortage of pilots, we observe that shortages in a field are not alone sufficient to demonstrate that his endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. Although the Petitioner intended to train future pilots, he does not sufficiently explain or document how his individual training efforts would have the national impact contemplated by *Dhanasar*. 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 here has not properly detailed or documented how working as a pilot and instructor would impact his field more broadly.

The Petitioner emphasizes evidence in the record of his experience as a pilot, such as "delivering humanitarian aid relief and operating aircrafts over war zones and hostile areas." He further points to letters of recommendation discussing his contributions as a pilot, including his work with the United Nations and the U.S. Army in Afghanistan, as well as his flight experience in the Middle East and Africa. The Petitioner asserts that his experience could be utilized by the United States in future emergencies and crises. However, while the Petitioner's experience is intrinsic to his proposed endeavor, we note that an individual's experience is generally relevant not to the first prong of the *Dhanasar* adjudicative framework, but to the second,[2] which assesses whether an individual is well-positioned to advance a proposed endeavor. As such, evidence of the Petitioner's experience as a pilot does not sufficiently demonstrate the national importance of his proposed endeavor.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because 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 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).

[2] Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* framework, determinations concerning the second and third prongs are unnecessary to the ultimate decision; therefore, they will be reserved in this decision.

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.