U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31341241

Date: JUNE 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 although the Petitioner was eligible for classification as a member of the professions holding an advanced degree, he did not establish eligibility for a national interest waiver. 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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, 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. ANALYSIS

As stated, the Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[1] The only issue on appeal, therefore, is whether the Petitioner has met his burden of proof to establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, we conclude that he has not.

As a preliminary matter, the Petitioner alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [his] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375; *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 *USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner avers on appeal that the evidence is sufficient to demonstrate his eligibility for a national interest waiver, he does not identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition. We are therefore unable to meaningfully address the Petitioner's general assertion alleging the improper standard of proof application.

Furthermore, we conclude that the record remains insufficient to demonstrate that the Petitioner's proposed endeavor has national importance required by the first prong of the *Dhanasar* framework, as the evidence regarding the occupation in which the Petitioner seeks to be employed and the proposed endeavor that he intends to pursue is inconsistent, and he has not resolved the inconsistencies.

In a professional plan and statement submitted with his Form I-140 Immigrant Petition for Alien Workers, the Petitioner indicated that his proposed endeavor in the United States was to "offer [his] expertise and to use [his] skills and knowledge gained through his professional experience [as a commercial pilot], to pursue positions within U.S. companies and other organizations that today face a very high demand for pilots," and that he would also train others in the field. The Petitioner further stated that he intended to expand his company, I-A-C-,[2] and "focus on providing to the target demographic customers: Project Trade, Technical Schools, Aircraft Maintenance, Repair and Overhaul for start-ups and SBA companies." He added that the company's five-year goal was to develop from the flagship hangar and office space in Florida to generate 31 full-time and part-time employee and contractor positions for U.S. workers in Florida, California, and Indiana. In response to the Director's subsequent notice of intent to deny (NOID) the Petitioner submitted a business plan stating that his endeavor relied on developing I-A-C-, a firm that will provide aircraft management services, single and multi-engine aircraft pilot outsourcing, turbo propeller and jet aircraft pilot outsourcing, aircraft detailing (internal and external cleaning) services, as well as aircraft pre-buy

[1] We note, however, material evidentiary inconsistencies which raise questions about the Petitioner's advanced degree claim. Specifically, while the English translation of the Petitioner's university diploma, as well as the academic evaluation he submitted, indicate that he was awarded a "bachelor's degree in civil engineering," the corresponding Spanish-language document reflects only that the Petitioner was awarded a title of civil engineer (el Titulo de Ingeniero Civil) and does include any references to the level of the underlying academic degree.

[2] We use initials only for privacy.

assessment and consulting services. Although the Petitioner also indicated that he planned to continue his career as an airline transportation pilot, he identified himself as the company's CEO on the organization charts for Florida, California, and Indiana submitted as part of his business plan. The Petitioner explained that he owned 50% of the shares in I-A-C-, while two other individuals owned 25% of the shares each. According to the business plan, the Petitioner intends to invest $150,000 in the company in the first year and to reinvest part of the profits in the next four years for a total investment of $275,000.

The substantive information in the Petitioner's professional and business plans is not consistent with the information he provided on the Form I-140 regarding his proposed employment. Specifically, on the Form I-140, Part 6. Basic Information About the Proposed Employment, the Petitioner indicated that the job title for his full-time position would be "Commercial Pilot" and stated that his annual wages would be $99,640. Furthermore, the Petitioner stated that his work duties would be, in relevant part, to "[p]ilot and navigate the flight of fixed-wing aircraft on nonscheduled air carrier routes, or helicopters. Requires Commercial Pilot certificate. . .." Neither the professional nor the business plan, however, includes references to the Petitioner's employment as a pilot in I-A-C- or any other company, or to his annual salary. Rather, both indicate that the Petitioner's intended employment is that of the company's CEO.

The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here, the Petitioner has not reconciled the material inconsistencies between his proposed employment as a commercial pilot on the Form I-140, and as the company's CEO in the business plan. Moreover, he has not provided specific information about his own role and duties within the company, aside from stating generally that the company will employ 31 workers and that it is "is set to impact the trade, technical schools, aircraft maintenance, repair and overhaul industry with a total payment of wages of 3.40 million dollars in a total of five years of operation in the States of Florida, California, and Indiana." In view of the unresolved material inconsistencies regarding the Petitioner's proposed employment in the United States and lack of specificity concerning his proposed endeavor, we cannot give the professional and business plans he submitted significant probative weight, and further conclude that these inconsistencies diminish reliability and sufficiency of other evidence in the record.

In denying the Form I-140, the Director acknowledged that the proposed endeavor had substantial merit. Nevertheless, the Director determined that the Petitioner did not show the endeavor was of national importance, such that it would have an impact on the aviation industry in the United States beyond serving the clientele of his own company. Thus, the Director concluded that the Petitioner did not satisfy the first prong of the *Dhanasar* analytical framework and that "further analysis of the second and third prongs outlined [therein], therefore, would serve no meaningful purpose."

On appeal, the Petitioner contends that his work extends beyond the confines of specific employers, and that his business plan demonstrates the potential for the proposed endeavor to generate significant annual revenues, create jobs, and contribute to the U.S. economy. He asserts that his activities will address the national pilot shortage and improve the efficiency of the U.S. aviation and aeronautics industries by creating jobs for U.S. workers and generating other substantial positive economic effect.

The Petitioner reiterates, referencing previously provided industry reports and online publications, that there is a significant shortage of pilots in the United States and that as a commercial pilot he can help fill this shortage. He avers that his qualifying roles in the aviation industry, including over seven years of experience as a commercial pilot, corroborate his ability to actively serve the country in an area of national importance, and that he has therefore demonstrated that his "proposed endeavor is clearly of national importance when considering how much a professional of his caliber can contribute to U.S. economy, regardless of labor certification."

We do not dispute the Petitioner's experience and skills as an airline pilot; however, factors such as an individual's "education, skills, knowledge and record of success in related or similar efforts," although relevant in assessing whether that individual is well-positioned to advance the proposed endeavor, are not material to the first *Dhanasar* prong – whether a proposed endeavor has both substantial merit and national importance – and we need not address them further in this context. *See id.* at 888-91.

Moreover, while we acknowledge the Petitioner's references to various online publications about pilot shortages and other challenges the aviation industry is facing as a whole,[3] in determining whether an endeavor is of national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," and evidence of the "potential prospective impact" of the noncitizen's work rather than generalizations about the importance of an industry, field, or profession. *Dhanasar*, 26 I&N Dec. at 889. Here, none of the previously provided publications address the Petitioner or his proposed endeavor and, as such, they do not establish how his specific endeavor may be of national importance. *See id.*

Rather, based on the Petitioner's descriptions of his proposed endeavor, and notwithstanding the material inconsistencies noted above, the endeavor appears to benefit the specific clients or other entities and individuals who may use his services. Firstly, the evidence does not show how "pursu[ing] positions within U.S. companies and other organizations that today face a very high demand for pilots," and training others in the field will have broader implications, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* Nor does the record demonstrate how generating a total of 31 full-time and part-time positions[4] establishes a "significant potential to employ U.S. workers . . . or other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Consequently, as the preponderance of the evidence does not point to potential broader implications or substantial positive economic effects of the proposed endeavor, the record does not establish that the Petitioner's proposed endeavor in the aviation field may be of national importance. *See id.*

Based on the above, we conclude that the Petitioner has not established that his proposed endeavor has national importance, as required by the first *Dhanasar* prong. Because the Petitioner is ineligible for a national interest waiver on that basis alone, we need not address at this time whether he satisfies

[3] Including *Covid-19 Aviation's Recovery Flight Plan, Airline and Business Jet Pilot Demand Outlook*, and *Study Predicts Pilot Shortage Will Return by 2022*.

[4] We note that in the I-A-C- organizational chart submitted in response to the NOID the Petitioner indicated that the company would employ unspecified numbers of janitors and cleaners; general and operations managers; commercial pilots; cleaners of vehicles and equipment; aviation inspectors; aircraft mechanics and service technicians; administrative assistants; accountants and auditors; and one pilot identified by name.

the second or third *Dhanasar* prong and reserve our opinion on those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

III. CONCLUSION

The Petitioner has not met his burden of proof to show that he satisfies the first prong of the *Dhanasar* analytical framework. Consequently, he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.