U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31035353

Date: JUN. 20, 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 established he is an individual of exceptional ability but did not establish that a waiver of the required job offer, and thus that 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 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.*

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

[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.

for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] 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

As an initial matter, we note that the Petitioner asserts the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, he does not point to specific examples of this within the Director's request for evidence (RFE) or denial. The Petitioner also does not offer a detailed explanation for how the Director "imposed novel substantive and evidentiary requirements" in denying the petition or support his assertion with any pertinent law or regulations. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that a petitioner must support their assertions with relevant, probative, and credible evidence).[3]

The Petitioner also generally alleges that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to [his] detriment . . .." The standard of proof governing immigration benefit requests is "preponderance of evidence." *Id.* To determine whether a petitioner has met its burden under the preponderance standard, we evaluate whether a petitioner's claims are "more likely than not" or "probably" true, but also consider the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition. *Matter of Chawathe*, 25 I&N Dec. at 375-76. However, the Director's RFE explained the deficiencies and concerns in the Petitioner's initial filing relating to *Dhanasar*'s three prongs and provided a non-exhaustive list of documentation and material that the Petitioner could submit to address such deficiencies. As such, the Director followed the applicable regulations and procedure in adjudicating this petition, and there is no basis in the assertion that the Director held the Petitioner to a higher standard of proof. *See* 8 C.F.R. § 103.2(b)(8).

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[2] *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).

[3] We find it important to point out that although we agree with the Director's overall conclusion that the Petitioner has not established the national importance of his proposed endeavor, the Director's statement that "continuing employment in one's position, field, or industry is not an endeavor sufficient to evaluate under this analytical framework" constitutes legal error. *See Love Korean Church v. Chertoff*, 549 F.3d 749, 753–54 (9th Cir. 2008) (standing for the proposition that imposing a novel evidentiary requirement is an abuse of discretion). Thus, we withdraw that portion of the Director's analysis. However, because the Petitioner has not otherwise met his burden of establishing, by a preponderance of the record, that his endeavor is of national importance, we decline to remand the matter on this basis.

A. Substantial Merit and National Importance

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. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. 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. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. 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.

The Petitioner's professional plan outlines his proposed endeavor and asserts that he intends to continue his work as a pilot and pilot instructor. Currently, he is an Airbus 320 and Boeing 767 instructor pilot at [redacted] in Florida. He contends that his endeavor will have multiple benefits to the United States including mitigating the pilot shortage in commercial and military aviation, increasing overall airline safety, promoting air transportation of goods, and facilitating "all service industry [sic] in the United States economy." Apart from continuing his current line of work as an instructor, his endeavor includes conducting extensive research to implement improvements in developing and enhancing training courses, materials, and products that can be utilized effectively by U.S. and global airlines. The stated goal of his endeavor is to contribute to national aviation development, generate new job opportunities for the American workforce, and establish a permanent pipeline for aviation. In his role as president of the [redacted] he asserts he is implementing two courses to train low-experience pilots joining the airlines and targeting "low-time" pilots who want to learn multi-crew operations. As such, upon de novo review, we conclude the Petitioner proposed endeavor has substantial merit and withdraw the Director's determination otherwise. Because the endeavor has substantial merit, we turn to whether the proposed endeavor is of national importance, as contemplated by *Dhanasar*.

On appeal, the Petitioner submits a brief and asserts that the Director did not give "due regard" to his resume, professional plan, his "work in the field, which demonstrates his vast contributions in his field," letters of recommendation; and industry reports and articles "demonstrating the national importance of [his] proposed endeavor and the steep shortage in the U.S. of professionals with his profile in the field." He maintains that his endeavor is of national importance because "he is highly competent to address governmental concerns, all while progressively affecting the U.S. economy."

The Petitioner asserts that his endeavor is of national importance because it includes training individuals to become commercial pilots at a moment when the United States is facing a shortage of pilots, and because the aviation industry affects many dependent industries (including trade and tourism, restaurants, hotels, car rentals, airlines, shopping centers, shipment of goods, entertainment venues and parks,) as well as "staffing those industries and more with the supplies needed." He claims

his endeavor will prevent airline closures, the collapse of tourism, boost economic growth, and alleviate poverty.[4]

The Petitioner cites to sources and statistics that paint a picture of the breadth of airline industry as well as how the industry impacts other areas of the economy like international trade through cargo shipping.[5] However, these sources and statistics do not reference his proposed endeavor, and thus while they speak to the substantial merit of his endeavor, they do not establish its national importance. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that assertions must be supported with relevant, credible, and probative evidence). He asserts that the aviation training programs he is involved in will significantly impact the aviation industry because they will provide a "quick and reliable supply of pilots while prioritizing safety." We acknowledge that the airline industry plays an important role in international trade and commerce, which speaks to the substantial merit of his proposed endeavor. However, in determining whether the proposed endeavor has 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." *Dhanasar,* 26 I&N Dec. at 889.

Moreover, he provides several letters to support his assertion that his endeavor is of national importance. While these letters help establish the substantial merit of his endeavor, they do not establish its national importance. *Matter of Chawathe*, 25 I&N Dec. at 375-76. For example, a letter from his supervisor at [redacted] states, "[The Petitioner's] primary responsibility is to conduct flight training in accordance with FAA and [redacted] rules and regulations." The supervisor adds, "I believe that he is a person of national interest due to his valuable contribution to the growth and training of pilots within the United States and around the world." While this letter explains his endeavor's value to the pilots he trains and [redacted] it does not establish that his endeavor will prevent airline closures, boost economic growth, alleviate poverty, or cause the other broad economic impacts he claims. *Id.* Furthermore, the letter does not corroborate his claim that he is developing training programs. *Id.* Finally, we note that the Petitioner's qualifications are the focus of *Dhanasar's* second prong, when we examine whether he is well-positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890.

The reference letters provided generally speak to his qualifications and experience in the aviation industry. While these letters establish that he is a pilot held in high regard by his peers and possesses

[4] We note that in an annotation to his Form I-290B, he asserts his endeavor "has a potential of broadly impacting as a postdoctoral research associate in the field of air and space propulsion systems." This information appears to be related to another individual because it does not relate to the Petitioner's endeavor. *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.)

[5] For example, the Air Transport Action Group found that the "global aviation industry reached [$]2.7 trillion, about 3.5 percent of the world's gross domestic product (GDP) in 2014." Other statistics cited to establish that his endeavor is of national importance include that the air transport industry supports 62.7 million jobs globally, 9.9 million direct jobs, over three million people employed by airlines, air navigation service providers, and airports, 1.1 million people employed by the "civil aerospace sector (the manufacture of aircraft, systems, and engines)," 5.5 million work in other on-airport positions, "52.8 million indirect, induced, and tourism-related jobs were supported by aviation," 1.2 billion tourists crossing the borders each year, in "2014, aviation supported over 36 million jobs within the tourism sector, contributing roughly USD $892 billion a year to global GDP," and in "2014, USD $6.4 trillion worth of goods was transported internationally by air, representing 35 percent of world trade by value, despite representing only 0.5 percent by volume."

valuable experience, they do not demonstrate the national importance of his endeavor. *Id.* The letters, along with some submitted reports and articles, discuss the importance of his endeavor in relation to the U.S. airline industry's pilot shortage. We acknowledge his assertion that his endeavor attempts to alleviate this shortage through training. However, a labor shortage in a particular field generally does not render a proposed endeavor nationally important under the *Dhanasar* framework, as the U.S. Department of Labor directly addresses these shortages through the labor certification process. Furthermore, while the Petitioner's endeavor will train pilots to enter the field, the evidence suggests the pilot shortage is due in part to pilot retirements and the lack of a pipeline to train future pilots. These are broader issues his endeavor does not address or remedy. In *Dhanasar*, we determined that while the Petitioner's "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, while the Petitioner's endeavor includes training future pilots, this establishes the substantial merit of his endeavor but does not, by a preponderance of the evidence, demonstrate how the impact of his training courses will provide a broader solution to the pilot shortage at a level commensurate with national importance.

An aviation capstone coordinator and lecturer at [redacted] provides an advisory evaluation on the national importance of the Petitioner's endeavor. The evaluator opines that it is of national importance based on the Petitioner's skills, leadership positions, and experience as a pilot. The opinion writer also asserts that the endeavor is nationally important because airline pilot employment is projected to grow, and the airline industry accounts for a large part of the U.S. economy, being "essential in facilitating commerce and growth in developed nations, while exposing less developed nations to tourism and trade." However, this opinion is based entirely on the importance of the aviation field. Furthermore, the opinion writer does not address several aspects of the Petitioner's endeavor, which involves more than being a pilot but also providing training and instruction. *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 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. Moreover, as stated above, the Petitioner's past professional endeavors are the focus of *Dhanasar's* second prong, when we examine whether he is well-positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 890.

The Petitioner relies on industry reports and articles concerning such topics as the importance of the airline industry to economic growth, the negative impact the shortage of pilots is having on the industry, and reports from aerospace industry leaders, like Boeing, regarding the airline industry's commercial future in the United States. However, while the articles provide a context for some of his assertions, they do not *specifically* discuss the Petitioner's proposed endeavor or explain how his endeavor would have broader implications. *Matter of Chawathe*, 25 I&N Dec. at 375-76. As we explained above, in determining whether the proposed endeavor has 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." *Dhanasar,* 26 I&N Dec. at 889.

As contemplated by *Dhanasar*, we examined the record to determine if there is sufficient evidence to conclude the Petitioner's "undertaking may have national importance . . . because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* at 893. Here, the Petitioner asserts his endeavor includes conducting extensive research to implement improvements in developing and enhancing training courses, materials, and products that can be utilized effectively by U.S. airlines and globally. To support this assertion, he provides a professional plan and reference letters that discuss his past accomplishments in the field. The Petitioner's professional plan also outlines his more than 19 years of experience and specialized knowledge in the aviation field (including 9,000 flight hours), as well as his positions in the aviation field, and highlights his achievements, for example that he holds the highest pilot license level ("Airline Transport Pilot" from the Federal Aviation Administration (FAA) and the ICAO ATPL), and a large part of his career has been as a flight instructor, in addition to his role as president of the [redacted], which develops, prepares, and conducts new training programs, courses, and seminars in accordance with FAA regulations and guidelines. These professional achievements are generally considered under *Dhanasar's* second prong, where we consider if the individual is well positioned to achieve his endeavor. *Id.* at 890. As such, his past and present achievements do not establish the national importance of his endeavor. For example, a reference letter explains that when he was working for the [redacted] he collaborated in a project to develop a training course, and that "[u]nder [his] leadership, the team exhibited exceptional competence and diligence, and the civil aviation authority validated the program." We acknowledge the Petitioner's prior work has garnered positive references; however, he has not submitted evidence to establish that he is developing a method of training pilots that differs from or will improve upon the methods already available and in use in the United States. In addition, while several reference letters bolster his claim that he is the president of [redacted], where he "devises mechanisms to identify and track [redacted] inconsistencies, and assigns accountability for their resolution," the evidence does not establish his role is to create innovative curriculum but to ensure compliance with the standards already in place. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

We also explained in *Dhanasar* 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 . . . may well be understood to have national importance." *Id.* at 890. We acknowledge that the Petitioner's professional plan cites to statistics relating to the importance of the airline industry to the U.S. and global economy due to its impact on trade and tourism, among other economic sectors; however, he has not established that his proposed endeavor will specifically impact the economy at a level commensurate with national importance. *Matter of Chaw*athe, 25 I&N Dec. at 376. In sum, we agree with the Director that the Petitioner has not shown that the implications of his endeavor go beyond any individual pilot he trains or his employers to reach the level of national importance.

B. *Dhanasar's* Third Prong

As the Petitioner has not established the national importance of his proposed endeavor, we decline to reach and hereby reserve his arguments regarding his eligibility under the third prong, as well as our review of the Director's conclusion that he is an individual of exceptional ability, and that he is well positioned to achieve his endeavor. *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, 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.

ORDER: The appeal is dismissed.