U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30188168

Date: MAR. 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot, seeks classification 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. The Director concluded the Petitioner did not demonstrate his eligibility for a national interest waiver. 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." 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. We observe that the Director determined in her denial that the Petitioner submitted sufficient initial evidence to meet at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) to show his eligibility as an individual of exceptional ability. The submission of sufficient initial evidence does not, however, in and of itself establish eligibility. If a petitioner satisfies these initial requirements, U.S. Citizenship and Immigration Services (USCIS) then considers the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Matter of Chawathe,* 25 I&N Dec. at 376 (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality"). *See also Kazarian* v. *USCIS,* 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *See generally* 6 *USCIS Policy Manual* F.5, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

In denying the petition, the Director did not provide the requisite final merits determination addressing whether the Petitioner qualifies for this classification as an individual of exceptional ability. As discussed below, the Petitioner has not presented adequate reasons or evidence on appeal to overcome the Director's determination that he is ineligible for a national interest waiver, as a matter of discretion. Therefore, we need not remand the matter to the Director to determine his eligibility for the EB-2 classification.[2] Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *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).

B. National Interest Waiver

The Petitioner, a native and citizen of Colombia, stated he intended to use his expertise and knowledge as a commercial pilot to continue working in the aviation field in the United States, noting that he could "help fill the alarming number of Pilot positions…as well as train others in the field." The Petitioner emphasized his more than nine years of experience in the field operating a wide variety of aircraft and his over 4500 hours of flight time. The Petitioner asserted that his proposed endeavor to

[2] We note that on appeal, the Petitioner does not assert, nor does the record establish, that he is a member of the professions holding an advanced degree.

work in the aviation field as a pilot was of national importance since it would address a significant shortage of trained pilots in the United States, meet rising demand in air travel, help the national economy, and allow for the uninterrupted movement of people and business. The Petitioner indicated his "expertise and knowledge" would "fill pilot positions in order to avoid cancelling flight routes, inconveniencing customers, going bankrupt [*sic*], and negatively impacting commercial activities such as tourism, trade, and related transactions – which rely on air travel." The Petitioner submitted several industry articles and reports highlighting the impact air travel has on the U.S. economy, the shortage of trained pilots in the United States, the contribution of the airline industry to tourism and other industries.

The Director later issued a request for evidence (RFE) concluding the Petitioner had established that his proposed endeavor had substantial merit. However, the Director indicated the Petitioner did not demonstrate that his proposed endeavor would have national importance. The Director indicated that the Petitioner had submitted evidence reflecting that there was a shortage of workers in the Petitioner's field but noted that simply working in a field where there are shortages of workers did not demonstrate that his proposed endeavor would have a prospective national impact. The Director also stated that the evidence of the Petitioner's experience as a pilot did not establish its national importance. As such, the Director requested that the Petitioner submit additional evidence to establish the endeavor's potential prospective impact, such as documentation to substantiate how it would have national or global implications in the field, have significant potential to employ U.S. workers or have other substantial economic effects, broadly enhance societal welfare or cultural or artistic enrichment, or significantly impact a matter that a government entity has described as having national importance.

In response, the Petitioner largely reiterated the same assertions regarding the prospective national impact of his proposed endeavor provided in support of the petition. He stated that his proposed endeavor would have broad national implications and produce significant national benefits, having "numerous ripple effects," including the "successful transportation of cargo" and the "generation of more revenue." The Petitioner again pointed to his prior development and training of pilots abroad, stating this would allow him to train new pilots entering the aviation field in the United States. The Petitioner emphasized his skills and experience, indicating that it allowed him to receive position offers from [redacted], due to his "deep insight into and knowledge of advanced aircraft systems, the handling of in-flight system failures, identification and troubleshooting." Again, the Petitioner provided several industry reports and articles highlighting various issues in aviation, including pilot staffing shortages and the economic impact of the aviation industry directly and indirectly, on things such as tourism and cargo transport. The Petitioner further provided an expert opinion from a Professor [redacted], a professor of mechanical and aerospace engineering at the [redacted], stating that the "United States would greatly benefit from the expertise and skills of a seasoned commercial pilot such as [the Petitioner]. Professor [redacted] also emphasized the impact of the aviation industry on the U.S. economy.

As discussed, the Director concluded the Petitioner established that his proposed endeavor had substantial merit. However, the Director determined that the Petitioner did not demonstrate the national importance of his proposed endeavor. The Director stated, as they did in the RFE, that the Petitioner had submitted evidence to establish that there was likely a potential shortage of workers in his field but determined this did not, in turn, demonstrate the national impact of his proposed endeavor.

The Director further concluded that the Petitioner had established that his work would have an impact beyond his employer and its clients and customers. On appeal, the Petitioner again reiterates the same assertions provided in support of the petition and in response to the RFE, once again pointing to the Petitioner's over ten years of experience and over 5,000 flight hours, asserting that he is "readily equipped to provide such services within the nation" and "train others in the field." The Petitioner again emphasizes provided articles and reports that discuss potential shortages of pilots in the aviation industry and the economic impact of aviation on the economy.

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." *Matter of 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. 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.

First, on appeal and throughout the record, the Petitioner regularly emphasizes his skills and experience as a pilot, noting his over ten years of experience and his thousands of flight hours. The Petitioner also provided an expert opinion from Professor [redacted] from the [redacted] emphasizing his skills and experience. However, the Petitioner's knowledge, skills, and experience in his field 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 discussed throughout the record, and does so again on appeal, a shortage of airline pilots in the United States and the effects this could have on the national economy. The Petitioner states repeatedly that he would have a prospective national impact by filling in for this national shortage. However, as noted by the Director, a shortage of workers in a petitioner's field does not alone demonstrate the national impact of a proposed endeavor. For instance, the Petitioner discusses, according to him, an airline industry accounting for 5% of the U.S. gross domestic product and generating over $1.6 trillion in economic activity, yet he does not sufficiently describe how filling one pilot position would have a national impact on this large industry. Again, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work, but the specific endeavor that the foreign national proposes to undertake.

Further, the Petitioner does not sufficiently discuss and document what his proposed endeavor would involve, nor its national impact, other than indicating that he would be employed as a typical commercial airline pilot. The Petitioner emphasizes the "ripple effects" of his employment, the importance of the aviation industry and its moving of cargo within the economy but does not explain how the employment of one pilot would have a prospective national impact on either. Further, the Petitioner indicates that he would train new U.S. pilots and points to his work on advanced aircraft systems. However, the Petitioner does not detail or document how he would have a significant impact on the training of new U.S. pilots or aircraft systems on a national level. The Petitioner submitted

generic and unsupported assertions regarding the potential prospective impact of his proposed endeavor. For instance, the Petitioner suggested that he had already been offered positions at [redacted] in the United States, but provided no supporting evidence to substantiate this assertion, providing only a letter from an [redacted] indicating that it this company wished to hire him as a "Demo-pilot" responsible for "international customer support." There was little indication from the submitted evidence that the Petitioner would be doing national-level work on such things as advanced aircraft systems or the training of U.S. pilots. The Petitioner must resolve discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In sum, the Petitioner has provided little supporting evidence to substantiate that his proposed work as a pilot in the United States would have a potential prospective impact on a national level.

The Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor would rise 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. *Matter of Dhanasar*, 26 I&N Dec. at 893. As noted by the Director, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his proposed employer and its clientele. As such, the Petitioner has not demonstrated that his proposed endeavor would have a broad influence commensurate with national importance.

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. Since this issue is dispositive, we decline to reach and hereby reserve the Petitioner's arguments with respect to the second and third prong outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. at 516.

III. CONCLUSION

As the Petitioner has not met the requisite first prong 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.

ORDER: The appeal is dismissed.