U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30213230

Date: MAR. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a helicopter 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 EB-2 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 had not established that the Petitioner qualified for classification as an individual of exceptional ability and that a discretionary waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 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. Because this classification requires that the individual's services be sought by a United States employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States 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. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence:

(A) An official academic record showing that the [noncitizen] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does so, we will then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe,* 25 I&N Dec. at 376.

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," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

[1] USCIS has confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposes to work in the United States as a helicopter pilot. The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualified as an individual of exceptional ability. The Director determined that although the Petitioner met at least three out of six criteria, the record lacked evidence that the Petitioner's degree of expertise is significantly above that which is ordinarily encountered in the sciences, arts, or business.

A. Individual of Exceptional Ability

The Director considered the totality of the evidence presented in a final merits determination and found that the Petitioner, had not demonstrated by a preponderance of the evidence that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Petitioner did not claim eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree.

On appeal, the Petitioner argues that the Director made erroneous conclusions of law and fact and failed to conduct proper final merits analysis of the totality of the evidence presented. The Petitioner states that he submitted evidence to demonstrate that he is an individual of exceptional ability. The resolution of the issues pertaining to the Petitioner's eligibility for a waiver of the job offer requirement, and thus of a labor certification, under the *Dhanasar* analytical framework are dispositive of this appeal. For that reason, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

B. Substantial Merit and National Importance

The record shows that the Petitioner's proposed endeavor is to work as a helicopter pilot in the medical air transport field. The Director acknowledged that the Petitioner's proposed endeavor has substantial merit, and that he is well positioned to advance the proposed endeavor. The Director determined, however, that the Petitioner did not establish the proposed endeavor is of national importance, and that, on balance, it would benefit the United States to waive the job offer requirement.

[2] *See also 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).

On appeal, the Petitioner asserts that the Director overlooked evidence that demonstrates the national importance of the proposed endeavor based on its potential economic, societal, and public health benefits. For the reasons provided below, we conclude that the Petitioner has not established the national importance of his proposed endeavor and therefore is not eligible for a national interest waiver as a matter of discretion. While we do not discuss every piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The Petitioner states that he wants to continue working as a helicopter air ambulance pilot. In his personal statement, the Petitioner emphasizes his extensive experience as a pilot and expresses his intention to deliver expert helicopter pilot services to air medical transport companies.

In denying the petition, the Director concluded that the Petitioner did not demonstrate that his proposed endeavor has broader implications, has significant potential to employ U.S. workers, or that it would broadly enhance societal welfare or cultural or artistic enrichment. The Director also determined that the Petitioner provided insufficient evidence to confirm whether he intends to pursue his proposed endeavor in an economically depressed area, whether his endeavor would result in employing a significant population of workers in the area, or whether his endeavor would bring substantial positive economic benefits to a region, or its population as contemplated by *Dhanasar*. *Id.* at 890.

The Petitioner contends that his proposed endeavor holds national importance because it will have a positive impact and contribute to the well-being, health, and reassurance of one in every four individuals in the United States. The Petitioner further asserts that his proposed endeavor has national importance because it will boost the air medical transport industry and will be an invaluable asset in the country. He asserts that helicopter air ambulance pilots play a crucial role in the public health of the country and maintains that his proposed endeavor is of urgent national importance, as a result.

The expert opinion letter states that the Petitioner's proposed endeavor is of national importance because it contributes to the national safety, security, and emergency response. The expert opinion letter's author highlights the importance of helicopter pilots in protecting communities and advancing national interests, and maintains that the proposed endeavor has national implications within the aviation field, has potential to employ U.S. workers, and will broadly enhance societal welfare.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner claims his endeavor will boost the aviation field, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises 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. *Id.* at 893. Though we acknowledge the Petitioner's assertions and the evidence he submits on appeal, we conclude that the Petitioner has not shown his proposed endeavor stands to

sufficiently extend beyond his employers to enhance societal welfare on a broader scale indicative of national importance.

The first prong focuses on the proposed endeavor itself, not the petitioner. *Id.* The Petitioner must establish that his specific endeavor has national importance under *Dhanasar*'s first prong. The Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. Specifically, the Petitioner has not demonstrated that his specific endeavor stands to provide substantial economic benefits in the United States. While the Petitioner claims that his endeavor will yield extensive benefits for the U.S. economy, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner relies on the aviation industry's importance and the shortage of pilots in the United States as evidence of his proposed endeavor's importance. The Petitioner also submitted a letter from his current employer, for whom he works as a helicopter air ambulance pilot, to demonstrate his endeavor's national importance. We acknowledge that the Petitioner is a qualified helicopter pilot; however, that fact alone is insufficient to establish the national importance of the endeavor proposed here. As previously mentioned, 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." *Id.* at 889. Although the Petitioner states his commitment to enhancing societal welfare and public health through his service as a helicopter air ambulance pilot, he has not, for example, sufficiently explained how he will positively impact the U.S. economy and create direct and indirect jobs to move the U.S. economy on a broad scale rising to the level of national importance. It is also important to note that the shortage of pilots, as well as helicopter pilots, does not render the Petitioner's proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner maintains that he is an experienced helicopter pilot with 17 years of experience in the field of air medical transportation and has worked as a helicopter pilot, instructor, and operations officer in organizations responsible for medical evacuations and air medical transportation. He further mentions his readiness to offer his knowledge and experience in the air medical transport field to make a positive difference in rural communities and affirms that his endeavor is nationally important. Though we acknowledge the Petitioner's experience and skill set, and his desire to work in rural areas, the Petitioner must demonstrate his proposed endeavor offers benefits which extend beyond his specific clients or community to impact the aviation industry more broadly. Moreover, the Petitioner must demonstrate the national importance of his specific proposed endeavor of working as a helicopter pilot rather than the importance of the national initiatives and interests, industries, or fields. He has not done so.

It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

For the aforementioned reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework. 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 of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 *Dhanasar* analytical framework's requisite first prong, we conclude that he has not established that 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.