U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37409152

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft maintenance technician, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or a person of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. 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 qualifies for the EB-2 classification based on exceptional ability and as an advanced degree professional, the record did not establish that a waiver of the required job offer, and thus labor certification, would be in the national interest. This matter is before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner bears the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1). If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

The Director determined that the Petitioner qualifies for the underlying EB-2 classification as an advanced degree professional holding a U.S.-equivalent bachelor's degree with at least five years of progressive post-degree experience in the field of specialty and as an individual of exceptional ability. 8 C.F.R. §§ 204.5(k)(1)-(3). However, the Director determined, among other things, that the evidence

[1] *See, e.g., Brasil v. DHS,* 28 F.4th 1189 (11th Cir. 2022*)* (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

did not show that the Petitioner's proposed endeavor (to continue to work as an aircraft maintenance and assembly technician) has national importance and he thus did not meet *Dhanasar*'s first prong. *Dhanasar*, 26 I&N Dec at 889-890 (discussing relevant factors and evidence for the first prong).[2]

In determining whether the Portioner warrants a discretionary national interest waiver, we apply the *Dhanasar* framework and its requisite three prongs, any one of which is dispositive. On appeal, he provides substantive arguments as to *Dhanasar*'s second and third prongs. However, the Petitioner does not address or contest the Director's specific conclusion and related findings that the evidence of record did not show that his proposed endeavor to continue to work as an aircraft technician in the aircraft maintenance industry has national importance, or otherwise claim or address that it has broader economic or societal implications that would have national or global impact. An issue not raised on appeal may be deemed waived. *See Matter of Garcia*, 28 I&N Dec. 693 n.1 (BIA 2023) (noting that issues not raised on appeal are waived); *Matter of O-R-E-,* 28 I&N Dec. 330, 336 n.5 (BIA 2021) (same); *see also United States v. Campbell*, 26 F.4th 860, 875, 887-88 (11th Cir. 2022) (holding that while the circuit court may in extraordinary circumstances consider arguments not raised on appeal, "[i]n most cases, an issue abandoned on appeal should still be dismissed without reaching the merits."). Accordingly, we deem this dispositive ground waived. Without satisfying this ground, and thus *Dhanasar*'s first prong, the Petitioner cannot show he warrants a discretionary national interest waiver.

We acknowledge that the Director initially issued a request for evidence (RFE) requesting additional evidence for *Dhanasar*'s all three prongs but subsequently cancelled it. The Petitioner claims that because the RFE was withdrawn, he could not submit additional evidence. But he concedes he in fact received the RFE but did not respond to it because it was rescinded. Although the Director's denial inadvertently mentions that he "failed" to respond to the withdrawn RFE, the Director did not deny the matter as abandoned, but rather specifically reached the merits of the case based on the evidence the Petitioner initially submitted below. The Petitioner also subsequently had multiple opportunities to supplement the record but did not submit any other evidence. Further, he specifically seeks review of this appeal on the merits based on the same evidence that the Director previously considered.[3] Therefore, the Petitioner's assertion that he was prejudiced by the withdrawn RFE is unpersuasive.

The Petitioner also alleges that the Director erred in finding that he qualifies for the EB-2 classification as an advanced degree professional where his claim is only based on exceptional ability. However, the Director was not precluded from doing so and in fact also concluded (though without any relevant analysis or findings) that the Petitioner qualifies for the underlying EB-2 classification based on exceptional ability as well. Regardless, as the identified ground for denial, the Petitioner's inability to meet *Dhanasar*'s first prong as explained above, is dispositive of this appeal, we are not required to (and do not here) reach the Petitioner's remaining appeal arguments as to the threshold visa classification issue or *Dhanasar*'s second and third prongs for a discretionary national interest waiver. *See, e.g.*, *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to reach issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

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[2] The Director also determined that the evidence did not demonstrate that the proposed endeavor has substantial merit and it did not satisfy *Dhanasar*'s second and third prongs.

[3] The Petitioner's appeal brief specifically states (on page 11) that he has provided "additional evidence" as part of his Form I-290B, Notice of Appeal or Motion, package. However, the record does not contain any new evidence.