U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37225501

Date: MAY. 14, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a technology entrepreneur with focus on artificial-intelligence-driven cognitive decision support tools for aerospace and aviation, 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 section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established that a 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 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit 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. Dhanasar states that U.S. Citizenship and Immigration Services (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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

Id.

## II. ANALYSIS

The Director determined that the Petitioner established eligibility for the underlying EB-2 classification as an advanced degree professional. The remaining issues on appeal are whether the Petitioner has established the national importance of his proposed endeavor under *Dhanasar's* first prong, that he is well-positioned to advance his proposed endeavor under the second prong, and that on balance waiving the job offer requirement would benefit the United States under the third prong. For the reasons discussed below, we withdraw the Director's finding that the Petitioner did not demonstrate the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework but agree that the Petitioner has not sufficiently demonstrated he is well-positioned to advance his proposed endeavor under the second prong of the Dhanasar analytical framework.

In 2022, the Petitioner completed his master's degree in software engineering from the [redacted] According to his petition, his proposed endeavor is to develop virtual reality tools modernizing pilot training and to introduce an adaptive AI-coach that will ensure training scenarios closely replicating real-life situations. The Petitioner also plans to offer decision support for aviation mechanics through virtual reality training. His proposed endeavor is to transform the aerospace industry through the development of advanced AI cognitive tools for pilots.

The Petitioner submitted documents in support of his national interest waiver petition, which included: his resume; school degrees and certificates of completion of courses in machine learning, CUDA Python, and data science; aircraft rating; certificate for flying and academic training; articles regarding piloting, flight training, and virtual reality for pilot training; Federal Aviation Administration (FAA) publications; the business plan for his proposed endeavor, [redacted] and letters of support.

On appeal, the Petitioner submits a brief as well as additional evidence that includes, but is not limited to, the following: President Trump's Executive Order, "Removing Barriers to American Leadership in Artificial Intelligence," Jan. 23, 2025; article about a January 2025 crash between an army helicopter and plane; USCIS policy alert regarding NIW petitions; U.S. Department of Transportation FAA Research and Development Annual Review 2023; and two letters from experts dated after the Director's decision.

### A. Substantial Merit and National Importance

The Director determined that the Petitioner established the substantial merit of his proposed endeavor but did not establish its national importance.

In determining whether the proposed endeavor has national importance, we focus on "the specific endeavor that the foreign national proposes to undertake" and consider its potential prospective impact. Matter of Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we 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.

The Director determined the Petitioner's proposed endeavor was not nationally important because the Petitioner had not established it had significant potential to employ U.S. workers or had other substantial positive economic effects, particularly in an economically depressed area. However, as discussed above, these are not the only factors that may establish the national importance of a proposed endeavor.

The Petitioner's proposed endeavor, which falls within a STEM field, involves researching to improve the nation's air transportation and air safety. The Petitioner cites to USCIS policy and literature reflecting the FAA's research and development priorities (including improving human performance in the system), the FAA Reauthorization Act of 2024 asserting zero tolerance for near misses and surface safety risk calls, and media articles regarding augmented reality being the next frontier in flight training. He also submitted in the record below letters of support from experts discussing the potential significance of U.S. advances in the area of research and development in pilot training and air safety. USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in STEM areas important to U.S. competitiveness. See generally 6 USCIS Policy Manual F.5(D)(2), https://www.uscis.gov/policymanual. The Petitioner has demonstrated that his specific endeavor of improving pilot training and air safety through development of AI-driven cognitive decision support tools for aerospace and aviation aligns with the White House's priority of improving technology relevant to air travel and air safety and would have national implications within the field. Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed endeavor has broader implications for the field, as his technology is adopted or licensed. Looking at the evidence in its totality, the Petitioner has sufficiently demonstrated by a preponderance of the evidence the national importance of his proposed endeavor. We therefore withdraw the Director's determination on national importance and conclude that by establishing the substantive merit and national importance of his proposed endeavor, he meets the first prong of the Dhanasar framework.

B. Well-positioned to Advance the Proposed Endeavor

The second Dhanasar prong shifts the focus from the proposed endeavor to the individual. Id. at 890. To determine whether individuals are well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Id.

On appeal, the Petitioner asserts the Director applied an erroneous standard that the Petitioner is required to make original contributions to the field of endeavor. He states that the Director's requirement that the Petitioner demonstrate that he made original contributions to the field of endeavor that garnered any recognition or influence in the field is inappropriate for the classification sought, and that such a requirement is the qualifying criterion for those who seek classification as an Alien of Extraordinary Ability under the E11 classification, a higher standard than a petitioner seeking national interest waiver classification. The Petitioner argues that his experience within the field is representative of the record of success far beyond what is expected of one within the field and denotes himself as an expert. On appeal, the Petitioner asserts that USCIS may not unilaterally impose a novel requirement that is not present in the controlling precedent or relevant regulations in order to serve as a bar for approval of a petition.

To the extent the Director's decision applied the standard of making original contributions to the field of endeavor that garnered any recognition or influence in the field when assessing whether the Petitioner had a record of success, we acknowledge that this may be construed as inconsistent with Dhanasar.

The Petitioner also claims the Director dismissed the relevant evidence as insufficient individually and did not assess the evidence in its totality. We have reviewed the entire record and assessed the relevant evidence in the aggregate. As to the Petitioner's education, skills, and knowledge, the record shows he possesses a master's degree in software engineering and support letters praised his relevant skills and knowledge. The Petitioner also provided a plan for future activities relating to his proposed endeavor.

With his initial petition, the Petitioner submitted reference letters from the experts. The experts attest to the Petitioner's talents and abilities with respect to software engineering. While the letters gave general praise, they were not sufficiently detailed regarding the Petitioner's past work in the field to allow for projections of his future work in the field within the United States. For example, one expert letter stated that when the expert identified a gap in a pilot training approach, the expert sought out the Petitioner to address the identified gap in the expert's overall training. This praise does not demonstrate ability to be a chief executive officer/chief technology officer and does not demonstrate the ability to identify problems.

Another expert letter stated that he welcomes the opportunity to evaluate the Petitioner's products for flight operations at a major airline. This expert did not commit to purchasing a product, but rather expressed openness to evaluating future products.

It is apparent from the letters that the Petitioner is a talented software engineer and pilot who has earned the respect of his colleagues. While the opinions of those in the field with whom the Petitioner is acquainted are not without weight, they do not provide sufficiently specific information to show by a preponderance that the Petitioner is well-positioned to carryout his proposed endeavor.

The record does not establish that the Petitioner has a record of success in efforts related or similar to his proposed endeavor as a chief executive officer/chief technology officer. The Petitioner has not established that working as a pilot or a software engineer prepared him to serve as a chief executive officer/chief technology officer. The Petitioner's resume does not reflect any supervisory or

managerial experience, yet his proposed endeavor anticipates hiring at least 12 employees within the first five years. Although the Petitioner has a degree in accounting science, has been a pilot, has a software engineering degree, a teaching assistant and software engineer intern experience, and has experience since January 2023 as a software engineer II, the Petitioner has not demonstrated that he has managerial experience nor experience as a chief executive officer or a chief technology officer.

The Petitioner's business plan states that the Petitioner will personally invest $20,000 of his own personal funds without any loans and projects raising $2,000,000 in additional capital in year one. The figure of $2,000,000 is unsupported in the record. The unsupported assertions of the Petitioner are not evidence. See Matter of Fermin Mariscal-Hernandez, 28 I&N Dec. 666 (BIA 2022)(Unsupported assertions and speculation have no evidentiary value).

In response to the Director's request for evidence (RFE), the Petitioner submitted no new evidence, but only a letter of counsel. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998).

The Petitioner has submitted additional evidence on appeal. Because both the regulation and the Director's request for evidence put the Petitioner on notice and gave him a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. See 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); Matter of Furtado, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new evidence on appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial); see also Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988); Matter of Obaigbena, 19 I&N Dec. 533, 537 (BIA 1988).

Although the Petitioner has demonstrated he has education, skills, and knowledge as a software engineer and as a pilot and he prepared a business plan, the Petitioner has no managerial experience and no experience as a chief executive or chief technology officer. The Petitioner has not established a record of success in efforts related or similar to his proposed endeavor. Consequently, the Petitioner has not shown that he is well-positioned to advance his proposed endeavor.

B. Whether on Balance a Waiver is Beneficial

The Petitioner has not established that he is well-positioned to advance his proposed endeavor. As this issue is dispositive of his appeal, we decline to reach and hereby reserve determination of his eligibility under the third prong of the Dhanasar framework. 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 established that he is well-positioned to advance his proposed endeavor and does not meet the second prong of the Dhanasar framework. Consequently, he has not demonstrated that he is eligible for or merits a waiver of the job offer requirement in the national interest as a matter of discretion.

ORDER: The appeal is dismissed.