U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38054118

Date: MAY 21, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, airline pilot, flight instructor, and route development agent, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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).

SCOPS denied the petition, concluding that although the Petitioner had established his qualification for EB-2 classification as a member of the professions holding an advanced degree, he 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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

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

- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

SCOPS concluded the Petitioner qualifies for EB-2 immigrant classification as a member of the professions holding an advanced degree.[2] Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

The Petitioner, an airline pilot, flight instructor, and route development agent, in a professional statement submitted with his petition, indicates his intent to "make multifaceted contributions to the United States as an aviation instructor, development route agent and pilot." He states that he is "eager to transition [his] career to the United States and continue [his] passion for flying." With a response to SCOPS' request for evidence (RFE), the Petitioner offers an updated professional plan clarifying that the proposed endeavor would involve "work as an Airline Pilot and Embraer Flight and Ground Instructor" and explains that he "aspire[d] to become a Development Route Agent and an Operational Safety Management System Agent…" and "aim[[ed] to work as an [Air Mobility Command (AMC)] Pilot."

Upon review of the record in its entirety, SCOPS denied his petition. It concluded that while the Petitioner demonstrated the substantial merit of his proposed endeavor, he had not established that it was of national importance as required under the first prong of the *Dhanasar* analytical framework.[3] Accordingly, SCOPS determined that the Petitioner had not established that he was eligible for, or otherwise merited, a national interest waiver as a matter of discretion.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. *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. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.* 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.

On appeal, the Petitioner contends that his proposed endeavor is of national importance, first arguing that SCOPS erroneously concluded that "the purpose of the national interest waiver is not to afford the petitioner an opportunity to engage in a job search or further his own career while only adding

[2] SCOPS did not address whether the Petitioner had established his eligibility for EB-2 immigrant classification as an individual of exceptional ability.

[3] SCOPS also concluded that although the Petitioner had satisfied the second prong of *Dhanasar*, he not shown that, on balance, waiving the job offer requirement would benefit the United States, as required under the third prong of the *Dhanasar* analytical framework.

ancillary benefits to the nation."[4] However, the purpose of a national interest waiver is not to facilitate a petitioner's job search in the United States. In his initial professional plan the Petitioner states his intent "to pursue employment opportunities with airlines or flight training organizations where [he] can utilize [his] skills to enhance operational efficiency and safety standards." In his updated professional plan, the Petitioner indicates that through this endeavor he intends to continue his employment as an airline pilot, flight instructor, and also that he aspires to become a development route agent. On appeal the Petitioner offers further evidence of his search for employment as a pilot in the United States, including communication regarding his application for employment with airlines and the requirements for employment with these airlines.[5] While the record demonstrates the Petitioner's intent to pursue a career in the United States as an airline pilot and flight instructor, as well as his desire for employment as a route development agent, it does not establish his job search's potential prospective impact because it does not demonstrate that it has national or even global implications for the field or otherwise broadly implicates matters of national importance. Moreover, the record does not describe how the Petitioner's job search, even if ultimately successful, relates to any potential positive economic effects that rise to a level of national importance.

Further, upon de novo review, the Petitioner has not shown the national importance of his proposed endeavor. To establish the national importance of his proposed endeavor, the Petitioner provides a personal statement, resume, an initial professional plan, an updated professional plan submitted with his RFE response, letters of recommendation, expert opinion letters, transcript, and training certificates. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The Petitioner's transcript, certificates, resume, recommendation letters, and an expert opinion letter discuss his educational background, skills, and expertise as a pilot and flight instructor. For example, [redacted], captain at [redacted], discusses the tasks the Petitioner performed for [redacted] including "contributing to continuous improvement of manuals, operational safety and the company's organizational culture" and "developing instructional materials for airport operations in Brazil." [redacted] addresses the Petitioner's qualifications as a pilot. However, the Petitioner's expertise relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong.

The Petitioner also asserts in the record below that the national importance of his proposed endeavor is also demonstrated through its potential economic impact. In the updated professional plan, the Petitioner cites statistics estimating that a new route for an Embraer 175 would create approximately

[4] We acknowledge the Petitioner's argument on appeal that SCOPS erred in finding that the absence of "an executed contract for employment as a pilot" impeded its ability to determine the national importance of the proposed endeavor. The existence of "an executed contract for employment as a pilot" could be a relevant consideration under the second prong in assessing how well positioned a petitioner is to advance a proposed endeavor. *See generally* 6 *USCIS Policy Manual* D.5[1], https://www.uscis.gov/policy-manual.

[5] The Petitioner also provides one of our non-precedent decisions in support of his appellate arguments. However, this decision was not published as precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

316 new jobs. He states that he is "confident that by employing the same strategies" he previously employed he could "establish at least 150 new routes within five years" leading to "an average of 47,000 new job opportunities." However, beyond these assertions, the Petitioner does not offer sufficient relevant evidence regarding any projected U.S. economic impact or job creation attributable to his specific services as a pilot or aviation instructor. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without sufficient evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the Petitioner has not shown that the benefits to the U.S. regional or national economy resulting from his services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 890.

In both professional plans, the Petitioner asserts that his proposed endeavor is of national importance as it will address a nationwide shortage of pilots both through his employment as a pilot and as a flight instructor. He references several industry reports which establish the basis for this increasing demand. [redacted] also notes that the Petitioner's "proposed endeavor revolves around his intention to continue his career as a pilot and flight instructor, with a strong focus on addressing the pilot shortage." It is important to note that the shortage of pilots, as well as aviation instructors, does not render his 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.

In his professional plan, the Petitioner argues that the societal and welfare benefits show the national importance of his proposed endeavor in part because it will "broadly enhance societal welfare or cultural enrichment" by contributing to "a thriving aviation industry ensur[ing] that people have access to convenient and affordable travel options". Broad assertions are insufficient to show the national importance of the proposed endeavor absent sufficient evidence to establish that it will result in societal benefits to the United States rising to the level of national importance. Here the Petitioner does not offer sufficient corroborating evidence of these societal and welfare benefits. In his updated professional plan, the Petitioner also states his intention to introduce more fuel-efficient aircraft into the United States and to develop training plans for these aircraft, resulting in positive benefits for the environment and therefore in societal and welfare benefits. He references his past experience as the head of the E2 Embraer aircraft implementation program for [redacted] as evidence of how this would be accomplished. However, recent employment history and prospects for future employment may illustrate the capacity in which the Petitioner intends to work and are relevant considerations when conducting our analysis under *Dhanasar*'s second prong.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytic framework, he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. This identified reason for dismissal is dispositive of the Petitioner's appeal, and thus, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the third prong of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

Although the Petitioner has established his eligibility for classification as an EB-2 immigrant, he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.