U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31140424

Date: MAY 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aviation maintenance technician, seeks classification as a member of the professions holding an advanced degree. *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. 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, concluding that the record did not establish that the Petitioner qualifies for the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding the equivalent of an advanced degree as defined at 8 C.F.R. § 204.5(k)(2) an advanced degree. The issue on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director determined that the Petitioner had not established the national importance of the proposed endeavor, and had not shown that, on balance, the United States would benefit from waiving the job offer requirement.

The Petitioner received a bachelor's degree in industrial engineering in Chile in 2012. He worked as an aircraft mechanic for various airlines in Chile from 2007 to 2020. Since November 2020, the Petitioner has worked as a mechanic in the United States in H-1B nonimmigrant status for an aviation services contractor.

A. The Proposed Endeavor

In a statement submitted with the petition, the Petitioner used the initialized terms "MRO" (maintenance, repair, and overhaul" and "SMED" (single minute exchange of die), and noted "four different types of higher-level maintenance: A, B, C, and the heaviest D checks." In his U.S. position, the Petitioner has "performed heavy maintenance duties, such as C checks." The Petitioner stated:

> I am capable of creating a system based on SMED methodology to improve the "time of change" in an aircraft C Check of any (MRO) in [the] United States, so that this can be easily implemented by following the sequence of phases:
>
> 1. Analysis and Fragmentation.
> 2. Classification of operations.
> 3. Determination of the Work Method.
> 4. Implementation and Follow-Up.

The Petitioner submitted a letter from an aviation support contractor in Florida, offering him a position as a project manager, contingent on approval of the petition. The letter does not describe the responsibilities of the position, and the Petitioner did not say whether he intends to accept the offer. Therefore, the offer's relation to the proposed endeavor is not well defined.

In a request for evidence (RFE), the Director asked for "[a] detailed description of the proposed endeavor." In response, the Petitioner stated:

> My proposed endeavor is . . . to implement a tool called Single Minute Exchange of Die (SMED) methodology, used by lean production to reduce the amount of time it takes to change from running one part or product to running a different one, improving

> the "time of change" in aircraft checks and thus facilitating the operation of the aviation maintenance industry. . . . My work . . . will be distributed in the area through my peer-reviewed publications and conference presentations, supporting advances in my sector principally employing consultancies in aviation maintenance schools, universities, airlines, and maintenance, repair, and overhaul (MROs).

B. National Importance

The first *Dhanasar* prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. We look for broader implications. An 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 889-890.

The Director concluded that the Petitioner had established the substantial merit of the proposed endeavor but not its national importance. We agree, as explained below.

The Petitioner asserted that his proposed endeavor "would clearly have a strong impact on the aviation industry. . . . For example, one of the most common problems is that there is no previous preparation in terms of tools, spare parts, task planning, personnel distribution, etc." He also stated that the "endeavor will be critical to the aviation industry at large because it will help airlines reduce maintenance costs and times across the board, and allow customers and cargo [to] reach their destinations more quickly." The Petitioner also asserted that his endeavor would result in "the improvement of airline operations and the enhanced safety of aircrafts within the industry."

The Petitioner identified a series of broad steps that he asserted would expedite the inspection process, but otherwise he offered few details about what his proposed endeavor would entail. The remainder of the Petitioner's initial submission consists largely of documentation of his experience and training, and background information about the aviation industry.

The Petitioner submitted abstracts from two scholarly articles, stating that one article described "maintenance scheduling . . . as a *difficult to solve problem*." The Petitioner quoted the other abstract as saying that "long-term aircraft maintenance scheduling is not often time-consuming but often ineffective." But the submitted abstracts show that both articles not only described the scheduling problem, but proposed solutions. One article indicates that its authors "perform[ed] a case study . . . show[ing] that the model could be a useful planning tool." The Petitioner did not explain how his proposed endeavor would improve upon the solutions proposed in the articles.

The Petitioner submitted information about the Federal Aviation Administration (FAA), and asserted that "[t]he agency aims to shape international standards to improve aviation safety and efficiency around the world." The Petitioner states that the FAA "has expressed the paramount importance . . . [of] improvements in the industry. . . . The existence of these provisions demonstrates that the U.S. government recognizes the importance of [the Petitioner's] proposed endeavor." The Petitioner cited

no specific "provisions," but pointed to a November 2021 statement from the FAA Administrator. The word "maintenance" appears once in that statement, in reference to "working . . . to influence and adjust the maintenance and pilot training requirements for U.S. products operating under other civil aviation authorities." The Administrator spoke in support of the Aircraft Certification, Safety, and Accountability act, which "has more than 100 specific requirements that we are implementing to make aircraft certification and safety oversight more holistic, systematic, transparent, and effective," but the official made no recognizable reference to the Petitioner's specific proposed endeavor.

Citing policy initiatives relating to science, technology, engineering, and mathematics (STEM) fields, the Petitioner stated that his proposed endeavor "specifically supports USCIS policy regarding STEM professionals and entrepreneurship." The description of the proposed endeavor does not indicate that the Petitioner is, or seeks to be, an entrepreneur. His statement provided the broad outline of proposed improvements in maintenance checks, with no indication of how he would implement those improvements.

In the RFE, the Director stated: "the petitioner has not offered sufficient evidence to demonstrate that his proposed entrepreneurship in the United States stand[s] to impact the regional or national population at a level consistent with having national importance. Nor has he shown that her particular endeavor would have broader implications for the industry or field."

In response, the Petitioner stated that his "endeavor will be critical to the aviation industry at large because it will help airlines reduce maintenance costs and times across the board," and that "the endeavor enhances the overall safety of airplanes." The Petitioner cited various statistics about the aviation industry as a whole, but provided no estimates of how much time or money his proposed endeavor would save, or how much the endeavor would improve airline safety.

The Petitioner submitted further background materials about aviation safety and the economic importance of the industry, but these materials do not address the specific proposed endeavor or quantify the benefits that would arise from it.

The Director denied the petition, stating that the Petitioner had not submitted "independent and objective evidence demonstrating that the petitioner's work has potential implications that are of national importance to the United States."

On appeal, the Petitioner states that the Director imposed novel requirements and disregarded the acknowledgment in *Dhanasar* that "ventures and undertakings that have as their focus one geographic area of the United States may properly be considered to have national importance." *Matter of Dhanasar*, 26 I&N Dec. at 889. The same passage in *Dhanasar*, however, requires the endeavor to have "broader implications," such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects." The burden remains on the Petitioner to establish those effects.

The Petitioner contends that the Director "fail[ed] . . . to correctly and rightfully consider the viable, probative evidence speaking to the national importance of the proposed endeavor." The record, however, contains no evidence relating directly to the proposed endeavor. Instead, the petition rests largely on the general assertion that, because the aviation industry is important, efforts to improve that industry have national importance. But without further details about the nature and extent of the

expected improvements, supported by reliable evidence, such general assertions do not suffice to meet the Petitioner's burden of proof.

We agree with the Director that the Petitioner has not met his burden of proof to establish the national importance of his proposed endeavor. For this reason, we will dismiss the appeal. Because this issue by itself is sufficient to determine the outcome of the appeal, we decline to reach, and hereby reserve, the Petitioner's arguments regarding the third *Dhanasar* prong.[2]

C. Other Issues

Beyond the Director's decision, review of the record reveals additional deficiencies.

To determine whether an individual is well positioned to advance the proposed endeavor, and thus satisfies the second *Dhanasar* prong, 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. *Matter of Dhanasar*, 26 I&N Dec. at 890.

The Director concluded, without further elaboration, that the Petitioner established that he is well positioned to advance the proposed endeavor. We disagree.

The Petitioner asserted that he had set forth a model or plan for future activities, but he provided minimal details about the nature of his proposed endeavor. He stated his intention to implement SMED technology into aircraft inspections, but he did not explain the employment context in which he would do so. This is a significant omission because he seeks an employment-based immigrant classification. The Petitioner sometimes described himself as an "entrepreneur," but he did not submit any information about any business that he seeks to establish or run. Instead, he submitted a job offer letter from a potential employer seeking to employ him as a project manager.

In terms of progress towards achieving the proposed endeavor, the Petitioner stated that he is "capable of creating [the] system." This wording suggests that he had not yet done so when he filed the petition. The Petitioner has not established that his proposed endeavor has advanced beyond a general intention to use SMED to expedite aircraft inspections.

In his RFE response, the Petitioner stated that he would disseminate his methods through "peer-reviewed publications and conference presentations." The Petitioner did not establish that he has written any such papers or given any such presentations.

The Petitioner also referred to "consultancies in aviation maintenance schools, universities, [and] airlines," but he did not specify whether he himself would be the consultant; show that he had any prior consulting experience or taken any steps toward establishing a consultancy business; or

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

demonstrate that schools, universities, or airlines have expressed any interest in securing the services of the Petitioner or other consultants relating to the proposed endeavor.

Given the lack of evidence of any specific details about the endeavor and how the Petitioner would implement it, we conclude that the Petitioner has not met his burden of proof to establish that he is well positioned to advance the proposed endeavor.

Also, we disagree with the Director's conclusion that the Petitioner qualifies for classification as a member of the professions holding an advanced degree.

By regulation, a United States bachelor's degree or 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). The Petitioner observed that he "holds the U.S. equivalent of a Bachelor's degree . . . [and] over 12 years of progressive work experience in the field." But to qualify for the classification, an individual must not only hold an advanced degree or its equivalent, they must also seek employment in a profession.

"Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). The occupations listed in section 101(a)(32) of the Act are architects, engineers, lawyers, physicians, surgeons, and certain teachers.

The burden of proof is on the Petitioner to establish that his occupation qualifies as a profession. He asserted that he is a professional, but he cited no supporting information and submitted no evidence to that effect. Although the Petitioner has referred to himself as an "industrial engineer," letters from his past and present employers have consistently referred to him as a "mechanic" or "technician."

Guidance from the U.S. Department of Labor does not indicate that aircraft mechanics are members of the professions:

> Aircraft mechanics and service technicians typically enter the occupation after attending a Part 147 FAA-approved aviation maintenance technician school. . . .
>
> Avionics technicians typically earn an associate's degree before entering the occupation. . . .
>
> Although not required, bachelor's degree study in engineering or a related field, such as transportation, may provide useful background knowledge.

Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, How to Become an Aircraft and Avionics Equipment Mechanic or Technician, https://www.bls.gov/ooh/installation-maintenance-and-repair/aircraft-and-avionics-equipment-mechanics-and-technicians.htm#tab-4 (added to the record).

Consistent with the information from the *Handbook*, the Petitioner's experience as an aircraft mechanic dates back to 2007, when he was 18 years old, several years before he earned his bachelor's degree. Therefore, his own employment history demonstrates that he did not need a bachelor's degree to work as an aircraft mechanic.

The prospective employer's letter in the record lists the offered position as being for a "project manager." The letter does not state the minimum requirements for that position, and therefore does not establish that the Petitioner has been offered a professional position.

In the absence of affirmative documentary evidence to establish that the Petitioner is a member of the professions and seeks employment in a profession, we conclude that the Petitioner has not met his burden of proof to establish that he qualifies as a member of the professions.

III. CONCLUSION

The Petitioner has not established the national importance of the proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.