U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31260787

Date: MAY 31, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a flight instructor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding the Petitioner did not demonstrate that: 1) he qualified for the EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability; or 2) he merited a national interest waiver, as a matter of discretion, under the three-prong framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The matter is now before us on appeal. 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 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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).

"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. 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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." *Id.* 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:

- 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. EB-2 Classification

In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. In denying the petition, the Director concluded that the Petitioner did not qualify for the EB-2 classification as an advanced degree professional[2] or as an individual of exceptional ability.

The Director concluded that the Petitioner met only two of the minimum three required criteria necessary to warrant a final merits determination as to whether he established eligibility as an individual of exceptional ability. However, in apparent contradiction, the Director later recognized that the Petitioner had satisfied three criteria[3] and provided an unfavorable final merits determination. As part of his analysis, the Director stated that the Petitioner "did not submit sufficient documentary evidence to establish that his experience and/or accomplishments surpass that of others in the field." On appeal, the Petitioner maintains that the evidence of record demonstrates his extensive experience as a pilot and eligibility as an individual of exceptional ability.

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[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 to be discretionary in nature).

[2] On appeal, the Petitioner does not dispute the Director's conclusion regarding his qualifications as an advanced degree professional.

[3] We note that, while the Director indicated in the request for evidence that the Petitioner met the "minimum regulatory requirement" for a fourth criterion, in his denial, the Director determined that the Petitioner did not meet that criterion.

As discussed below, the Petitioner has not presented sufficient evidence to establish his eligibility for a national interest waiver, as a matter of discretion. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his eligibility for the EB-2 classification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

B. National Interest Waiver

The Petitioner described his proposed endeavor in response to a request for evidence as follows:

> I hold the unique distinction of being the sole individual in North America to possess Flight Instructor Ratings from four different countries. It's important to note that these Flight Instructor Ratings are not convertible; each one must be acquired independently by successfully completing the respective country's ground exams and flight tests.
>
> . . .
>
> I'd like to gently clarify that my career aspirations do not include seeking a role as an airline pilot. Instead, I find my strongest suitability and inclination towards the roles of a Flight Instructor and the domain of Commercial Piloting, where my qualifications and interests align most harmoniously.
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> . . .
>
> I would like to reiterate my strong preference for the autonomy to independently select a reputable institution. I have firm confidence that my extensive qualifications and vast experience would unquestionably bring significant value to any flight training institute.

The first 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. *Dhanasar*, 26 I&N Dec. at 889.

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." *See Dhanasar*, 26 I&N Dec. at 889. 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. Further, to

evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

Upon review, we observe that the Director's decision misinterpreted the Petitioner's proposed endeavor as an intention to work in the United States as an airline pilot. The record reflects that the Petitioner's intention was to work in the United States as a flight instructor. On appeal, the Petitioner points to his experience, including his credentials from several countries, asserting the following (quoted as written):

> Beyond any doubt, this substantial merit will be of national importance as while being with any flight school, the customers of that United States flight school will be able to get more prospective flight students globally as students with attraction of four countries flight ratings.

Documentation submitted in the record also emphasized the Petitioner's experience and how it will serve to attract a diverse array of flight school students and address a national pilot shortage. First, the Petitioner's experience is generally relevant not to the first prong of the *Dhanasar* adjudicative framework, but to the second, which assesses whether an individual is well-positioned to advance a proposed endeavor. In addition, the Petitioner has not explained how his intention to fill a single position at a flight school to instruct students in a field of high demand would alleviate an asserted national shortage of pilots. The Petitioner's vague assertion that his proposed work would have a potential positive impact on the number of pilots in the United States does not serve as probative evidence to demonstrate its national impact on the field of aviation. The Petitioner did not explain in detail or sufficiently document how his work as a flight instructor would have a potential prospective national impact on the aviation industry or economy. The burden is on the Petitioner to provide evidence to support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, the importance of a nationwide issue does not confer national importance on the Petitioner's proposed endeavor to work as a flight instructor. Again, in determining national importance within the *Dhanasar* framework, the relevant question is not the importance of the field, industry, or profession in which the individual will work, but the specific endeavor that the individual will undertake. *Id.* at 889.

The Petitioner has not demonstrated that his proposed endeavor would serve to impact the industry or field more broadly, rising to the level of national importance. Further, it is not clear how the Petitioner's employment as a flight instructor for a training academy in the United States would have a positive economic impact at the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890. While the Petitioner links his proposed endeavor's national importance to an asserted shortage of pilots, we observe that shortages in a field are not alone sufficient to demonstrate that his endeavor stands to have an impact on the broader field or otherwise have implications rising to the level of national importance. Although the Petitioner intended to train future pilots, the record does not sufficiently demonstrate that his individual training efforts would have the national impact contemplated by *Dhanasar*. 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.

The record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 met the requisite first prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that he is eligible for or otherwise merits a national interest waiver. The petition will remain denied.[4]

ORDER: The appeal is dismissed.

[4] We note that the Petitioner initially submitted documentation regarding his military service and sources describing naturalization opportunities for certain military service members active during hostilities, as per section 329(a) of the Act. The Petitioner also submitted an excerpt from the Federal Register reflecting an executive order discussing eligibility for naturalization based on military service during the Persian Gulf Conflict. However, the Petitioner's military service is not relevant here to demonstrating his eligibility for either EB-2 classification or a national interest waiver. The Petitioner's assertions regarding his military service and potential naturalization on this basis are relevant to a Form N-400, Application for Naturalization, which we do not have jurisdiction over in this appeal of a denied Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver).