U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34246632

Date: NOV. 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an airplane pilot, seeks classification as an individual of exceptional ability in the sciences, arts or business. *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 classification as an individual of exceptional ability. The Director also concluded that the Petitioner did not establish eligibility 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.

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2]

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

USCIS will then conduct a final merits determination to decide whether the evidence as a whole shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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. *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,[3] 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.

II. ANALYSIS

The Petitioner began working as a pilot for various private and charter companies in his native Brazil in 2002. He also owned an air support operation company from 2011 to 2019. More recently, the Petitioner worked as a pilot for [redacted] from 2019 to 2021 and for a charter company in [redacted] Florida, since 2021. The Petitioner has traveled frequently to the United States, and currently resides in Florida. When he filed the petition in June 2022, the Petitioner had been in the United States since September 2021. The Petitioner holds an airline transport pilot (ATP) license from the Federal Aviation Administration (FAA).

A. Exceptional Ability

To establish eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii), summarized below:

(A) An academic degree relating to the area of claimed exceptional ability;
(B) Ten years of full-time experience in the occupation;
(C) A license or certification for the profession or occupation;
(D) A salary or other remuneration that demonstrates exceptional ability;
(E) Membership in professional associations; and
(F) Recognition for achievements and significant contributions to the industry or field.

If the above standards do not readily apply to the individual's occupation, the petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii). If an individual meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual's field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010)

[3] *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).

(discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

The Petitioner claimed to have satisfied all of the criteria except the one pertaining to salary. The Director concluded that the Petitioner had satisfied four of the six criteria (pertaining to experience, licensure, memberships, and recognition), and proceeded to a final merits determination. Therefore, we begin our discussion at that point.

Meeting the minimum requirement by providing at least three types of initial evidence does not, in itself, establish that the beneficiary in fact meets the requirements for exceptional ability classification. Officers must also consider the quality of the evidence. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. The officer must determine whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the beneficiary has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

The Director issued a request for evidence (RFE), stating that, although the Petitioner had satisfied the requirements of three criteria, the record as a whole did not show that the Petitioner possesses "a degree of expertise that is significantly above that ordinarily encountered in the aviation industry." The Director noted that "letters of support were written by past acquaintances," and that the Petitioner had not submitted "independent or unbiased letters" attesting to his exceptional ability. The Director also stated that a published article that identified the Petitioner as a pilot for a charter service did not demonstrate exceptional ability, and that the Petitioner had not shown that his training went beyond "industry standard training that all pilots must complete."

The Director afforded the Petitioner an opportunity to submit additional evidence of exceptional ability.

In response, the Petitioner asserted that he "complies with at least 6 of the 6 criteria, which demonstrates that he is a Pilot of Exceptional Ability." The Petitioner did not address the final merits determination or the specific issues the Director raised in the RFE.

In the Director's decision, the final merits determination focused on two elements of the record. The Director acknowledged that the Petitioner "submitted several training completion certificates relating to the area of endeavor," but had not established "that completion of such training can only be performed by only the most highly qualified pilots. The certificates appear to be standard industry requirements as there is no record differentiating them from higher level piloting."

On appeal, the Petitioner does not directly address this issue except to state that his "training credentials and licenses are to be assessed in conjunction with the entirety of the evidence in the record. They are not intended to establish his exceptional ability alone." Nevertheless, the burden is on the Petitioner to establish how these materials *support* a determination of exceptional ability, by demonstrating a level of expertise significantly above that ordinarily encountered in the field. Without

objective evidence to establish the ordinary level of training and licensure among pilots, the Petitioner cannot establish that his credentials show exceptional ability.

The Director also addressed evidence of the Petitioner's membership in professional associations, from the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). The Director stated that the Petitioner had established "membership in various associations relating to piloting and avionics," but had not established that these memberships are limited to pilots with the required high level of expertise.

On appeal, the Petitioner does not directly address the above determinations. Instead, the Petitioner asserts that the Director did not properly consider the record as a whole. We acknowledge that a final merits determination must rest on consideration of the entire record. The Director stated: "In its totality, the petitioner has not shown by a preponderance of evidence that he possesses a degree of knowledge or expertise in the field of endeavor that far super[s]edes his peers." More specifically, the Director reviewed the limitations of two claimed criteria. Also, because the Petitioner had cited the claimed memberships, it is appropriate to consider the circumstances of those memberships.

The Petitioner had previously submitted materials relating to two associations. The first is the National Air Transportation Association (NATA). The documents in the record do not show that the Petitioner is a member of the NATA. Web printouts in the record refer to "NATA's . . . member companies" rather than individuals. The NATA materials, therefore, do not address or satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), and they neither demonstrate nor imply that the Petitioner, as an individual, has a degree of expertise significantly above that ordinarily encountered in his field.

The other association is the Aircraft Owners and Pilots Association (AOPA), which the Petitioner joined five days before he filed the petition. The record does not indicate that the AOPA requires any particular level of expertise. Further than that, it does not appear that prospective members need to be qualified pilots at all. A web printout in the record indicates that AOPA's members include active pilots, but also people with "an aspiration to learn to fly," and those with "an unbridled enthusiasm for aviation and a desire to share it with others." The printout refers to a "Membership" page with information about "how to join AOPA," but the Petitioner did not submit a printout of the Membership page.

The Petitioner did not establish that the AOPA is a professional association for pilots, rather than a broader organization for aviation enthusiasts including, but not limited to, individuals employed in aviation.

Therefore, it appears that the Director erred in determining that the Petitioner had satisfied the "membership" criterion.

It also appears that the Director erroneously granted a second initial criterion. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) calls for "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The Director concluded that the Petitioner had satisfied this criterion by submitting "various certificates highlighting the petitioner's achievements."

The certificates in the record, however, do not establish recognition for achievements and significant contributions to the aviation industry. Rather, they show that the Petitioner completed various training courses.

When the Petitioner claimed to satisfy the "recognition" criterion, he did not cite any certificates as supporting evidence. Rather, he pointed to "letters of recommendation from . . . clients, peers, and professional organizations," and a published article.

The Petitioner initially stated that his "current employer[] recognized [his] skills, and past achievements through the Business Airport International Magazine." The headline and focus of the article in question is the company's addition of a [redacted] to its existing fleet of six aircraft. The article names the Petitioner as one of "three pilots [hired] to captain the [redacted] and refers to him as "a licensed pilot in the U.S., Brazil and Qatar who most recently served as a captain transporting VIP passengers on international flights aboard a [redacted] This brief biographical information does not identify any significant contributions to the aviation industry.

Letters from the Petitioner's employers and colleagues provide details about his career, but do not explain how his achievements constitute significant contributions to the industry as the criterion requires. The language of the regulation calls for "evidence of recognition for achievements *and* significant contributions to the industry or field." As such, materials that identify an individual's achievements but not significant contributions to the industry or field cannot suffice to satisfy the regulatory requirements. *See Matter of Echeverria*, 25 I&N Dec. 512, 518 (BIA 2011) (holding that "[t]he use of the conjunction 'and'" in a series of regulatory requirements "constitutes a clear indication that [one] must satisfy each of the [listed] requirements").

Two of the letters refer to the Petitioner's "nationally important track record of achievements," but the achievements described in the letters relate to improvements to the employers' performance and revenue, rather than contributions that were significant to the industry as a whole.

Neither the letters cited by the Petitioner nor the certificates noted by the Director appear to show recognition for achievements and significant contributions to the industry or field.

On appeal, the Petitioner states that he "owned and operated his own air support operations company" and "possesses over 50 certifications, including multiple type ratings for a diverse array of aircraft. His logbook demonstrates that he has accrued over 6,700 total flight hours." The Petitioner does not explain how these facts help to establish a degree of expertise significantly above others in the field. For example, the Petitioner does not establish that his certifications show that he has received a significantly higher level of training than is ordinarily encountered among pilots.

Many of the certificates in the record document the Petitioner's completion of short-term training courses, some of them lasting a day or a week. The Petitioner did not establish that completion of the courses imparts a degree of expertise significantly above that ordinarily encountered in the field.

The Petitioner states that "only 16% of all pilot certificates issued by the FAA are ATP licenses, considered the highest pilot license available." The Petitioner cites no record evidence to show that the ATP license requires or demonstrates a degree of expertise significantly above that ordinarily encountered among pilots. The percentage of pilots who hold ATP licensure may be relevant if a much larger percentage of pilots seek that licensure but only a small minority qualify for it, but the

Petitioner has not submitted evidence to that effect. The narrowness of a particular specialization does not necessarily attest to the level of expertise necessary for that specialization.

The Petitioner asserts that previously submitted "letters of support from other professionals and experts in aviation" show that he "positively impacted not just his served companies, but the larger aviation industry." The Petitioner quotes two of these letters on appeal, discussed below.

The regional vice president of South American sales at [redacted] stated that the Petitioner has "extraordinary" knowledge of the company's aircraft, and that his "technical expertise has really made a big difference in the way we support his work needs." This information focuses on the Petitioner's effect on his employer and its relationship with one of its suppliers, and does not address significant contributions to the industry or field.

The second quoted letter is from a pilot who has worked with the Petitioner since 2022. The pilot praised the Petitioner's long experience as a pilot and stated that the Petitioner "performed extraordinarily well during . . . exams" conducted by the FAA. The Petitioner did not establish that experience and passing examinations are significant contributions to the industry or field, or explain how these factors "impacted . . . the larger aviation industry."

Other submitted letters from former employers and colleagues attested to the Petitioner's experience and described some of his achievements, largely in terms of how the Petitioner's work benefited his employers.

The Petitioner states: "These letters highlight his experience not just as a pilot, but in various leadership roles for major airlines and private companies, including his own. . . . He possesses a unique career in comparison to other pilots." The relevant consideration is not whether the Petitioner possesses different or broader experience than other pilots. Rather, the Petitioner must establish a degree of expertise significantly above that ordinarily encountered in his field. The Petitioner has not established that experience as a manager or administrator has given him a significantly higher degree of expertise as a pilot, which is the occupation that the Petitioner intends to pursue in the United States.

We agree with the Director's conclusion that the Petitioner has not established exceptional ability at the final merits determination. As explained above, the Director also appears to have erred in granting some of the underlying regulatory criteria, but this error does not affect the outcome of the final merits determination or the appeal.

In light of the above conclusions, the Petitioner has not met his burden of proof to show that he qualifies for classification as an individual of exceptional ability.

B. National Interest Waiver

The remaining issue to be determined 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 satisfied the three prongs of the *Dhanasar* national interest test.

Describing his proposed endeavor in a statement submitted with the petition, the Petitioner stated:

> I intend to continue . . . working in the aviation field in the United States, where I can help fill the many and alarming number of Pilot positions in the U.S., as well as train others in the field. . . .
>
> . . . I have proven experience in operating a wide variety of aircrafts. . . .
>
> . . . I have developed this most important set of skills in my career as [a] Pilot that can be applied to any company, simulator training, ground training, consulting aviation company, CRM (crew resource management) training and aviation fields.

The Petitioner stated that "the U.S. needs 127,000 pilots for the next 20 years. . . . Companies will lose about 8,000 pilots because they will retire within the next five years."

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.

We will not dispute the substantial merit of the proposed endeavor, but we agree with the Director that the Petitioner has not established its national importance.

The Petitioner asserted that his "proposed endeavor to work as a Pilot is of national importance . . . , because it will help curtail an evident labor crisis in the field of aviation." The Petitioner cited "Industry Reports and Articles" establishing the economic importance of aviation and describing a shortage of qualified pilots.

The articles and reports discussed industry-wide trends and challenges. They did not address the Petitioner's specific proposed endeavor. By working as a pilot himself, the Petitioner would fill only one vacant position. He did not explain how, or produce evidence to show that, his intention to train other pilots would have a significant impact on an industry-wide pilot shortage.

The Petitioner submitted an expert opinion letter from a professor of aviation at [redacted] who indicated that the Petitioner "would work in the United States in an area of substantial merit and national importance." The relevant requirement, however, is not that the proposed endeavor is in an "area of . . . national importance." The Petitioner's specific endeavor itself must have national importance. The national importance of the aviation industry is not in doubt, but the proposed endeavor is for the Petitioner to work as a pilot and train others. The author of the letter did not explain how the Petitioner's proposed endeavor would have a nationally important effect on "a serious shortage of pilots."

In the RFE, the Director stated that "the analysis should focus on the impact of what the petitioner intends to do rather than the specific occupational classification." The Director also stated that a labor shortage "does not, by itself, establish that [the Petitioner's] work stands to impact the broader field or otherwise have implications rising to the level of national importance."

In response, the Petitioner asserted that his "proposed endeavor holds great promise for the U.S. aviation landscape," and that "his activities as a Pilot are due to broadly impact the field of aviation, as well as other matters of national significance." The Petitioner then repeated and elaborated upon the argument that he "can help fill . . . a staggering shortage of pilots," and that the shortage has broader implications because many other industries rely on aviation and, therefore, pilots.

The Petitioner submitted a revised "Professional Plan and Statement," indicating that his "objective is to contribute to mitigating the shortage of pilots in the U.S." by working as a pilot and "imparting [his] extensive experience to new pilots and co-pilots through flight instruction and training opportunities." The Petitioner submitted published articles about a pilot shortage, but he did not provide any details to explain how his proposed endeavor would appreciably affect that shortage.

In denying the petition, the Director stated:

> [The Petitioner] provided several articles discussing labor shortages in the field of endeavor. However, the national interest waiver was not created for the purpose of addressing this issue. . . . The U.S. Department of Labor already addresses shortages of qualified workers through the labor certification process, and through its Schedule A regulations. In setting forth the balancing test for the discretionary national interest waiver sought in this case, *Dhanasar* did not indicate that a shortage would affect the balance, but instead focused on factors in the national interest that could outweigh "the benefits inherent in the labor certification process." *Id.* at 890-91.
>
> In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, USCIS finds that the petitioner has not shown his proposed endeavor in this case stands to sufficiently extend beyond an organization and its clients, or the individuals the beneficiary would serve to impact the industry or field more broadly.

On appeal, the Petitioner observes that, in *Dhanasar*, we cited "media articles and other evidence documenting the interest of the House Committee on Armed Services in the development of hypersonic technologies and discussing the potential significance of U.S. advances in this area of research and development." *Id.* at 892. The Petitioner notes that "these articles did not discuss the petitioner's endeavor . . . specifically." The Petitioner argues that such "materials did not have to analyze the petitioner's specific proposed endeavor's prospective national importance."

A key distinction between *Dhanasar* and the present case is that the petitioner in *Dhanasar* provided other specific evidence that tied his proposed endeavor to the nationally important issues discussed in the articles. That petitioner did not simply assert that his proposed endeavor would, in some way, relate to those issues; he was able to point to specific research achievements that have attracted attention in his field. Furthermore, the petitioner in *Dhanasar* was engaged in research that could

impact his entire field. *Id.* Research findings can be disseminated and implemented; once a hypersonic propulsion system has been developed, its technology can be incorporated into an unlimited number of engines. The present Petitioner has not explained how his proposed endeavor would have a comparable impact on the aviation industry.

The Petitioner states that he "will not solve a nationwide pilot shortage singlehandedly, and he is not claiming that he will. However, he will position himself to train and qualify dozens, even hundreds of pilots." The Petitioner does not provide specific details about how he will provide this training, and he does not explain how this activity will appreciably address what is described as a shortage of tens or even hundreds of thousands of pilots. Also, while the Petitioner has submitted several articles describing a pilot shortage, those articles do not indicate that the shortage is largely the result of a lack of opportunities for training, or that the presence of one more training instructor would significantly reduce the shortage.

We agree with the Director that the Petitioner's assertions about a pilot shortage are not sufficient to establish the national importance of his specific proposed endeavor.

The above conclusions determine the outcome of the appeal. Further discussion of the national interest waiver claim cannot change that outcome. Therefore, we reserve argument on the second and third *Dhanasar* prongs relating to the Petitioner's claim of eligibility for the national interest waiver.[4]

III. CONCLUSION

The Petitioner has not established eligibility for classification as an individual of exceptional ability. Also, 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.

[4] *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).