U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33940031

Date: NOV. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft pilot and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is an individual of exceptional ability and that he is eligible or a national interest waiver. 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 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.

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] 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 the requisite degree of expertise and will

[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. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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. 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 U.S. Citizenship and Immigration Services (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.

Id.

II. ANALYSIS

The Director found that the record satisfied at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). However, the Director determined that the Petitioner "does not have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business" and, thus, did not establish exceptional ability. *See* 8 C.F.R. § 204.5(k)(2). Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

The first prong of the *Dhanasar* analytical framework requires the Petitioner to establish the proposed endeavor has both substantial merit and national importance. We agree with the Director that the submitted documentation establishes the Petitioner's proposed endeavor has substantial merit. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

With respect to his proposed endeavor, the Petitioner stated on his petition that he would work in [redacted] Florida as an aircraft pilot "operating scheduled and chartered flights within the United States." He submitted a business plan which provides that he "wants to create a platform to connect private jet owners and pilots to ensure safe, smooth, and flexible flying. [The] Petitioner will use his wide network of business contacts and pilots, especially pilots who took early retirement during the COVID-19 pandemic, to close the gap in the pilot shortage." The business plan also provides "[The] Petitioner's endeavor will

[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).

assist the aviation industry, specifically private jet owners, in answering the challenges they face; specifically, acquiring well-trained pilots whenever needed (on demand)." In response to a request for evidence, the Petitioner submitted an addendum to his business plan. The addendum references details of the proposed endeavor, including plans to offer vetted pilots for private and corporate plane owners on demand, and the use of a user-friendly online platform to book pilots.

The record includes, but is not limited to, the above-mentioned documents, immigration records, police certificates, industry reports, professional and educational records, work experience letters, character reference letters, and financial records.

In finding that the Petitioner did not establish the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework, the Director mentioned he did not establish the proposed endeavor would have a broader impact on the field. The Director also stated that the prospective impact would be to his company only. The Director discussed the Petitioner's business plan and found that it did not indicate how many people would be hired; the financial projections were not supported by data; and other company goals were not supported by referrals, letters of interest, or other evidence. As such, the Director found that the Petitioner did not demonstrate the company's potential to significantly hire U.S. workers, did not establish its financial projections, and did not demonstrate the potential to accomplish its goals. The Director further stated that even if the Petitioner established its presented figures, it would not show the benefits to the national economy would reach the level of substantial positive economic effects. Finally, the Director noted that the Petitioner did not provide sufficient evidence of the prospective endeavor's potential prospective impact, including broader implications, or national or global implications within the field; significant potential to employ U.S. workers; substantial economic effects, particularly in an economically depressed field; broad enhancement of societal welfare; or broad enhancement of cultural or artistic enrichment. Therefore, the Director concluded that the Petitioner did not establish the proposed endeavor has national importance.

On appeal, the Petitioner first claims that the Director made conclusions without applying the preponderance of the evidence standard. With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner does not specifically identify statements in the Director's decision applying a higher standard of proof or imposing novel substantive and evidentiary requirements beyond those set forth in the *Dhanasar* framework.

Next, the Petitioner states that his proposed endeavor will benefit not only his company, but also private and corporate plane owners, and new, retired, and minority pilots; the financial projections in the business plan are based on market trends, number of private planes, demand for pilots, pilot salaries, operation costs, etc.; and benefits to the national economy are addressed in his business plan.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the

"specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

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. While the Petitioner's statements reflect his intention to provide pilots to his company's future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, we conclude the Petitioner has not shown that his proposed endeavor stands to sufficiently extend beyond his company and its clientele to impact his field, the aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

The Petitioner's business plan and addendum provide information about the company and its services, financial forecasts and projections, marketing strategies, a discussion of his work experience, and a description of company personnel. Regarding future staffing, the Petitioner states he will hire 5 to10 pilots in year one and 15 to 20 pilots in year two, as well as a marketing team, a sales team, an accounting firm, a law firm, a secretary, a receptionist, and a technology team, all from the United States. However, he did not elaborate on these projections or provide evidence supporting the need for these additional employees. Furthermore, while his business plan offers revenue projections of $3,166,000 in 2025, $6,111,500 in 2026, and $6,480,000 in 2027, these projections are not supported by details showing their basis or an explanation of how they will be achieved.

The Petitioner further mentions large airlines will benefit from the proposed endeavor as more experienced pilots will be available to fly their planes and this will have a "knock-on-effect" allowing airlines to increase flights and move passengers and goods domestically and internationally; U.S. commercial airlines, the aviation industry, and the economy will benefit; and he previously supported the record with evidence such as a report to Congress about the lack of pilots and an article about Congress authorizing grants to flight schools due to pilot shortages. The Petitioner, however, has not sufficiently shown his business's purported "knock-on-effect" on the U.S. economy. He does not adequately explain what the impact on the national economy would be, and the record does not establish that his company would have sufficient size or scope to substantially affect the nation's economy or employment rate.

Accordingly, the Petitioner has not shown that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not demonstrated that his company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the Petitioner claims that his company has growth potential, he has not presented evidence indicating that the benefits to the regional or national economy resulting from his undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the

Petitioner asserts that his endeavor stands to generate jobs for U.S. workers, he has not offered sufficient evidence that his endeavor offers Florida or the United States a substantial economic benefit through employment levels or business activity. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the potential prospective impact of his proposed endeavor stands to offer broader implications in the aviation field. The Petitioner has not provided evidence demonstrating that his proposed company would operate on such a scale as to rise to a level of national importance.

The Petitioner has not established that he meets the requisite first prong of the *Dhanasar* analytical framework. Therefore, he has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.

ORDER: The appeal is dismissed.