U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33950648

Date: OCT. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot, seeks employment-based second preference (EB-2) immigrant classification, as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established 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:

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

Id.

II. ANALYSIS

The Director determined that the Petitioner established eligibility for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. The remaining issues on appeal are whether the Petitioner has established the substantial merit and national importance of his proposed endeavor under Dhanasar's first prong, that he is well-positioned to advance his proposed endeavor under the second prong, and that on balance waiving the job offer requirement would benefit the United States under the third prong. For the reasons discussed below, we conclude the Petitioner has established his proposed endeavor has substantial merit but agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar framework.

According to the Petitioner's initial statement, his proposed endeavor is to advance his career as a commercial pilot in the United States by working as a captain, co-pilot, and instructor. He described his skills and certifications and stated he would pursue pilot positions within U.S. airline companies and other aviation organizations, focusing on cargo positions for regional, national, or cargo airlines in the United States. He also stated he could also work for the private industry as, for example, an emergency medical services pilot. He described the demand for trainers and how he would alleviate tremendous industry shortage by offering his training expertise. He described teaching basic flight skills, emergency procedures, aviation regulations, safety procedures, and communication skills. He stated he could also apply for training jobs in schools and airlines as an instructor, where he would provide a comprehensive education and training program to prepare pilots. The Petitioner submitted an updated statement in response to the Director's Request for Evidence (RFE), which included his proposed duties as captain, and co-pilot. He also added that he is developing a project to establish a small flight school where he will offer a range of flight training programs.

According to the Petitioner's statements, pilots are essential to the aviation industry, which is an industry key to the U.S. economy and other industries, and the shortage of pilots is resulting in negative effects in these other industries. The Petitioner included a report on the aviation industry's economic impacts and articles describing the importance of the aviation industry, including how aviation effects tourism and global business, as well as articles on the shortage of pilots.

In support of his petition, the Petitioner also submitted an expert letter, letters of recommendation, and documents regarding his work history, education, and certifications. On appeal, the Petitioner submits a brief asserting his eligibility.

The first prong of Dhanasar, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. Matter of Dhanasar, 26 I&N Dec. 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. The Director determined the Petitioner did not

demonstrate that his proposed endeavor has substantial merit. However, the Petitioner provided materials reflecting his endeavor falls within one or more of the areas contemplated by Dhanasar establishing the substantial merit of his proposed endeavor. We therefore withdraw the Director's determination to the contrary.

In assessing national importance, we noted in Dhanasar, "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.

In finding that the Petitioner did not establish the national importance of his proposed endeavor, the Director determined that the Petitioner's RFE response, which added that he intends to establish a flight school, materially changed his proposed endeavor. On appeal, the Petitioner argues that including his intention of opening a small flight school did not materially change his proposed endeavor since he initially included providing training services to pilots as part of his proposed endeavor. However, as indicated above, the Petitioner did not initially indicate any intention to own and operate a business in his proposed endeavor and instead stated he would be seeking employment with various air carriers, as a pilot, co-pilot, and trainer. We agree with the Director that the Petitioner's response to the RFE stating that he wanted to open a flight school was a material change of his initial proposed endeavor.[2] As the Director noted, petitioners must establish eligibility at the time of filing, and consequently, a petition may not be approved at a future date based on new facts that come into being subsequent to the filing of the petition. 8 C.F.R. § 103.2(b)(12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Here, the Petitioner's RFE response proposed an entirely different activity that may be considered a material change to the petition and will not be considered in assessing eligibility. Matter of Izummi, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) (holding that a petitioner may not make material changes to a petition to make otherwise a deficient petition conform to USCIS requirements).

The Director determined that the Petitioner's documents, including his industry articles and report, discussed the general importance of the airline industry and pilot shortages, rather than the importance of his proposed endeavor and its prospective impact, as is pertinent when assessing national importance. We agree. The Petitioner asserts that the Director did not properly weigh the industry articles and report he submitted in support of the national importance of his proposed endeavor. According to the Petitioner, in Dhanasar we accepted media articles to establish national importance that did not discuss the petitioner's endeavor specifically. However, in Dhanasar, the petitioner's

[2] Even if we accept the Petitioner's argument that his updated statement provided an elaboration of his training plan, the Petitioner has not established the national importance of his amended proposed endeavor to open a flight school as contemplated by Dhanasar. While we acknowledge the Petitioner's updated statement included a short, bulleted list identifying the organization's objectives, services, targeted markets, future funding, and operations plan, e.g., acquiring permits, hiring experienced staff, the Petitioner did not submit, for example, a business plan explaining the proposed location of the business and evidence of growth metrics, or letters from industry experts supporting the national importance of the business. No information was provided on what national or global impact the Petitioner's business would have on the industry beyond the impact to the business itself and the Petitioner's customers, or showing that his business would have significant potential to employ U.S. workers, or substantial positive economic effects as contemplated by Dhanasar. Matter of Dhanasar, 26 I&N Dec. at 890.

proposed endeavor involved the design and development of propulsion systems. The articles Dr. Dhanasar submitted were deemed probative because they documented the interest of U.S. government agencies in the development of such propulsion systems. Moreover, the articles were considered in addition to probative expert letters in determining national importance and were not the sole factor we relied upon in our analysis. Unlike in Dhanasar, the Petitioner here does not specify how the articles and report, discussing the importance of the industry as a whole, are probative to establishing the national importance of his specific endeavor of being a pilot, captain, and trainer.

The Director also determined the Petitioner did not establish his proposed endeavor would diminish the airline pilot shortage, broadly impact the field of aviation, or would have substantial positive economic effects. On appeal, the Petitioner asserts that it is not his intent to solve a nationwide pilot shortage singlehandedly, but rather to train and qualify dozens, even hundreds of pilots through his planned activities in the United States. However, the alleged shortage of occupations or occupational skills does not automatically render the Petitioner's 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. The Petitioner does not explain or corroborate in the record how training hundreds of pilots will impact the claimed nationwide pilot shortage on a level commensurate with national importance. In addition, the Petitioner claimed in the record below that he will contribute to the aviation industry and the industries impacted by the aviation industry by operating aircraft and training other pilots. However, he did not explain how his proposed endeavor of being a captain, co-pilot, and trainer would have national or global implications within the aviation field, beyond the impact on his future employer(s). See id. at 889 (providing that a proposed endeavor improving manufacturing processes or medical advances may have national importance); see generally 6 USCIS Policy Manual F.5(D)(4), https://www.uscis.gov/policymanual (providing, as guidance, evidence demonstrating the proposed endeavor has the significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study, may rise to the level of national importance). Further, the Petitioner did not explain, nor did his evidence show, how his proposed endeavor has significant potential to employ U.S. workers or would have other substantial positive economic effects, particularly in an economically depressed area. See id. at 890.

On appeal, the Petitioner also argues that by working as an instructor he would be elevating the safety and technical practices of pilot organizations and creating innovations in the sector to achieve optimal levels of safety and security, issues he claims are discussed as nationally important in the underlying articles. The Petitioner does not identify which articles he is referring to in the record or where in the articles these issues are explained to be a priority of the U.S. government. However, we acknowledge that the expert letter submitted in the record below claimed the Petitioner will promote flight safety, an area that the Federal Aviation Administration (FAA) has prioritized, by acting as a safety specialist or quality assurance consultant and trainer on safety and compliance. However, the Petitioner's endeavor, as described in his statements, did not include acting as a safety specialist and quality assurance consultant within his scope of duties. In addition, the expert did not cite to the FAA article referred to in their letter and a copy was not provided in the record. While the Petitioner did propose to train pilots on safety and compliance, such as pre-flight inspections, weather assessments, situational flight awareness, the Petitioner did not explain, and his evidence did not show how his training advances the interests specified by the FAA. Further, even if the Petitioner provides training on an area that is a government priority, neither the expert nor the Petitioner sufficiently explained

how one individual's work providing safety training would impact the industry more broadly, to establish national importance. In Dhanasar, we determined 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; see generally 6 USCIS Policy Manual, supra, at F.5(D)(1) (explaining, as guidance, endeavors such as classroom teaching generally do not rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver).

The Petitioner further asserts that the Director erred in not considering his qualifications and record of success in assessing the national importance of his proposed endeavor. In support the Petitioner cites to the USCIS Policy Manual, where it states in relevant part, "[e]vidence establishing the petitioner's past entrepreneurial achievements and that corroborates projections of future work in the national interest are favorable factors." 6 USCIS Policy Manual, supra, at F.5(D)(4). Here, the record does not contain evidence of the Petitioner's past entrepreneurial achievements. While the Petitioner explained what his future work would entail, he did not provide projections of future work. Regardless, the USCIS Policy Manual does not cite this evidence as specifically supporting national importance and instead, generally identifies this type of evidence as supporting *Dhanasar's* prong two analysis, which looks to whether the Petitioner is well-positioned to advance his proposed endeavor. See generally 6 USCIS Policy Manual supra, at F.5(D)(1) (providing the factors USCIS considers in assessing *Dhanasar's* second prong).

Based on our de novo review, the Petitioner did not establish his proposed endeavor has national or global implications within a particular field. Id. at 889. Nor has the Petitioner established his proposed endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, to demonstrate national importance." Id. at 890. As a result, the Petitioner has not established the national importance of his proposed endeavor. As our conclusion is dispositive of this appeal, we reserve the Petitioner's arguments regarding whether he has demonstrated the second and third Dhanasar prongs. 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"); 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 established he has met the requisite first prong of the Dhanasar analytical framework and has therefore not established that he merits, as a matter of discretion, a national interest waiver of the job offer requirement attached to this classification.

ORDER: The appeal is dismissed.