U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33948651

Date: OCT. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, 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 proposed endeavor is of national importance or that it would be beneficial to waive the requirements of a job offer.[1] 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.

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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] The appeal brief states that the Director's decision did not address if the Petitioner is well positioned to advance the endeavor. That is incorrect. The Director's decision deemed that the Petitioner is well positioned.

[2] 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).

[3] 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.

in its totality shows that they are recognized as having the requisite degree of expertise and will 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. *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,[4] 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 Petitioner claimed eligibility for the EB-2 immigrant classification as an individual of exceptional ability. However, because we conclude that he is not eligible for, and does not merit as a matter of discretion, a national interest waiver, and this determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of eligibility as an individual of exceptional ability. *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).

A. Substantial Merit and National Importance

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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner intends to join "a civilian search and rescue organization" or "a comparable civilian air ambulance service" as a pilot. He also intends to train his employer's pilots and assist in the training of law enforcement pilots. The evidence provided does establish that the proposed endeavor is of substantial merit. However, the record does not demonstrate that the specific endeavor is of national importance.

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

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. 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. 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. 26 I&N Dec. at 893.

Here, the Petitioner has not adequately described how his position as a pilot and instructor will have a broader impact on the field, a significant potential to employ U.S. workers, or substantial positive economic effects, as contemplated by the first *Dhanasar* prong. 26 I&N Dec. at 889. The Petitioner argues in response to the request for evidence (RFE) that his proposed work is nationally important because few organizations offer these services and as such "the geographic scope of civilian search and rescue, or air ambulance companies, is nationwide." This argument ignores the requirements of *Dhanasar*. As *Dhanasar* makes clear, we look for "national or even global implications within a particular field." 26 I&N Dec. at 889.

The Petitioner's appeal brief further emphasizes the importance of "search and rescue and law enforcement aviation" and the importance of the Petitioner's past work in the United States. Nevertheless, as *Dhanasar* clearly instructs, the importance of the field does not determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. The briefs and the record do not explain how the Petitioner as a single pilot would have a nationally important impact on the search and rescue or air ambulance aviation field. The Petitioner must show how his individual work will have a nationally important impact on the field. Moreover, the Petitioner's past work experience concerns the determination under prong two to determine if the Petitioner is well-positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner also notes the pilot shortage in the United States. However, the provided evidence and the Petitioner's assertions, do not adequately explain how his intention to fill a single position as a pilot or to work as an instructor would have a national impact on this very large, claimed national shortage. 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 pilot or an 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 impact of the specific endeavor that the individual will undertake. *Id.* at 889.

The record does not sufficiently demonstrate national importance either. [5] The Petitioner provided his statements, letters of recommendation, and a number of articles and reports.[6] Many of the articles and reports provide background on the field or explain the field's importance. Yet the importance of the field does not determine the proposed endeavor's national importance. *See Dhanasar*, 26 I&N Dec. at 889. Furthermore, though the articles and reports provide background information, they are of little evidentiary value to the issue of national importance of the proposed endeavor. This is because they do not address the Petitioner's specific endeavor or how it would have broad implications in the aviation field in a way that implicates national importance. Moreover, though the letters of recommendation state that the Petitioner is a skilled pilot or detail specific past job performance, they did not stipulate how the Petitioner's proposed endeavor will contribute to the aviation field on a nationally important level. We observe that two of the letters generally noted that the Petitioner's skills would benefit the national interest. Nevertheless, in both, beyond this broad remark, the writers neglected to specifically illustrate how the proposed endeavor would be nationally important.

Regarding his proposal to work as an instructor, the Petitioner has not demonstrated how his training of pilots offers broader implications for his field. Similar to the petitioner in *Dhanasar*, while the Petitioner's plan to instruct pilot trainees has substantial merit, he has not demonstrated that his actions as an individual instructor would impact the field more broadly. 26 I&N Dec. at 893.

The Petitioner claims that his work also has the potential for significant economic impact. To support this assertion, the Petitioner points to his past work with the [redacted] where he helped enforce fisheries regulations and performed other missions. He also points to the economic and social impact of keeping illegal drugs out of the United States. However, these are his past actions. His proposed endeavor is not to work in his past position. Although the Petitioner avers that he plans to train law enforcement pilots, he had not provided sufficient evidence to link this proposed training to any specific significant economic impact. Contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Therefore, the Petitioner has not established that his proposed endeavor would have a significant potential to employ U.S. workers, or substantial positive economic effects as outlined by the first *Dhanasar* prong. 26 I&N Dec. at 889.

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, we find that the record does not establish that the Petitioner's proposed endeavor will sufficiently extend to affect the region or nation more broadly. 26 I&N Dec. at 893. He has also not shown that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

Accordingly, we find that the record does not demonstrate national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision and the Petitioner has not demonstrated eligibility for a national interest waiver. As the identified reasons for dismissal

[5] While we may not discuss every document submitted, we have reviewed and considered each one.

[6] We observe that many of the articles and reports submitted were lacking several pages of their content. We have reviewed them based on the pages included in the submission. The Petitioner should include all relevant pages of an article or report in any future submissions.

are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.