U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33970702

Date: OCT. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability. 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).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish he merits a discretionary waiver of the job offer requirement in the national interest. 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.

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. If a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the

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

documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." 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. 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 a matter of discretion,[2] 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 determined that although the Petitioner qualified for the requested EB-2 immigrant classification as an individual of exceptional ability, he did not establish eligibility for a national interest waiver under the Dhanasar analytical framework. Upon de novo review, the Petitioner has not established his eligibility for the EB-2 classification. In addition, the Petitioner has not demonstrated that a waiver of the labor certification would be in the national interest.[3]

A. EB-2 Classification as an Individual of Exceptional Ability

Although the Petitioner not meeting *Dhanasar's* first prong is the dispositive issue dismissing appeal, we will address the Petitioner's eligibility of for the underlying EB-2 immigrant classification. After reviewing the evidence in the record, the Petitioner has not demonstrated satisfying at least three of the six initial evidentiary criteria for being an individual of exceptional ability and is not otherwise eligible for the requested benefit.

The Petitioner claimed he met four of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii): ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B); a license to practice the profession or certification for a particular occupation at 8 C.F.R. § 204.5(k)(3)(ii)(C); membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E); and recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director determined the Petitioner satisfied all four criteria. For the final merits analysis, the Director did not provide an explanation for the finding, instead a conclusionary statement that "the [P]etitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." Additionally, such letters "shall include a specific description of the duties performed." 8 C.F.R. § 204.5(g)(l). Here, the Petitioner provided documentation relating to his work as a pilot with three different employers. However, none of the evidence, including the employment letters, flight logs, and employment contracts, indicates the Petitioner worked on a full-time basis. Moreover, an employment letter from his previous employer indicates he worked from October 2013 to August 2016 as a captain but does not indicate the Petitioner's job duties. Although the Petitioner also provided his flight logs for that employment to show his job duties as a pilot, the flight logs do not specify the duties he performed for the airline or that his work was full-time. Without more evidence, we cannot conclude the Petitioner satisfies the plain language of the criterion. We withdraw the Director's determination for this criterion.

Next, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires evidence of membership in a professional association. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The Petitioner submitted evidence of his membership in the Aircraft Owners and Pilots Association and in the Flight Safety Foundation. The record, however, does not show that either the Aircraft Owners and Pilots Association or the Flight Safety Foundation is comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that it otherwise constitutes a professional association. Therefore, the Petitioner has not demonstrated his membership in a professional association under this criterion. We withdraw the Director's determination for this criterion.

Because the Petitioner does not otherwise satisfy at least two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not determine whether he satisfies the two additional criteria claimed at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (F), in order to satisfy at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (F). See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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).

Since the Petitioner has not established that he meets at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

Accordingly, the record does not establish the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability, and we therefore withdraw the Director's determination.

B. National Interest Waiver

For the first Dhanasar prong, the Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, he did not establish that the proposed endeavor is of national importance. The Director further found that while the Petitioner is well-positioned to undertake the endeavor under *Dhanasar's* second prong, he did not establish that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification under *Dhanasar's* third prong.

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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 national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Matter of Dhanasar, 26 I&N Dec. at 889

The Petitioner proposes to work in the United States as a pilot for a major commercial airline. In addition to pilot flying duties, he intends to work in a management pilot position with additional job duties in flight safety or pilot instruction. With flight safety, he "would assist, advise[,] and monitor operating trends and provide to pilots and airline management the most updated information regarding the operation – identifying dangerous trends or practices to enhance flight safety and overall operations." He explains that he could also be "an instructor pilot or a check airman, which is an examiner authorized by the [Federal Aviation Administration] to perform evaluations in simulators and on the flying line to verify that the company pilots in the ranks are performing according the [s]tandard [o]perating [p]rocedures and therefore enhancing the safety of flight widely." The Petitioner indicates that his work will help ease the U.S. shortage of qualified pilots, enhance flight safety, and support the economic health of U.S. airlines. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that his proposed endeavor has the potential to "extend beyond a single organization and its clients to impact the field more broadly." Therefore, the Director determined that the Petitioner did not demonstrate that his endeavor is of national importance and did not meet the first prong of the Dhanasar framework. Upon de novo review, the Petitioner has not established that his proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

On appeal, the Petitioner contends that the Director did not correctly apply the preponderance of the evidence standard when evaluating the evidence. He claims he submitted relevant, probative, and credible evidence demonstrating the national importance of his proposed endeavor. Specifically, he references his professional experience, his statements, letters of recommendation from industry professionals, and research and articles to show his endeavor is of national importance.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. Matter of Chawathe, 25

I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. Id.; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

Next, the Petitioner stresses his professional knowledge, his more than 25 years of experience in flight safety management, and his nearly 20 years as an airline captain to show he "is a unique candidate with a distinct record of success, skill[,] and experience that serves the national interest." He points to letters of recommendation from industry professionals, including a letter from the Director of Emergency Response for a major U.S. airline, to show his distinct record and unique and versatile skills would substantially benefit the field of aviation.

The recommendation letters attest to the Petitioner's technical airline pilot knowledge by describing his successful flight safety investigations, his flight operations management experience, and his flight instructor training projects. We acknowledge that the Petitioner provided pilot management services and was committed to his employers, but the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate his endeavor has the potential to have a broader impact in his field rising to the level of national importance.

Moreover, the Petitioner's reliance on his professional knowledge and experience to establish the national importance of his proposed endeavor is misplaced. His professional knowledge and experience relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar's first prong. 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. Id. at 889. While the Petitioner's employers and colleagues generally attest to the Petitioner's dedication to his work and to improving flight safety and pilot flying skills for his previous employers, the content of these letters relates to the second prong of the Dhanasar framework, instead of speaking to the national importance of the Petitioner's proposed endeavor. Petitioner has not submitted sufficient documentary evidence based on these letters to establish that his proposed job duties in a management pilot position for a commercial airline would impact the aviation field more broadly, rather than benefiting his prospective employer and its clients.

Next, the Petitioner contends his proposed endeavor would help mitigate the significant shortage of qualified pilots in the United States. In addition to the Petitioner using his flying experience to immediately fill a needed pilot position with a commercial airline, he emphasizes that his "extensive experience as an instructor can directly address this issue." By training new pilots and advancing the skills of existing pilots, his endeavor would have a broader national impact of increasing the number of qualified pilots which would help to address the shortage of such professionals. In addition to alleviating the shortage of pilots, he claims his endeavor would provide economic benefits to the United States by generating revenue in various industries such as tourism and transportation of goods; improving aviation operational costs; and generating direct and indirect jobs. The record includes articles and industry reports relating to how the shortage of qualified pilots impacts the U.S. economy; economic impact of COVID-19 pandemic on civil aviation; pilot careers; civil aviation; pilot and

technician outlook for 2020 to 2039; impact of pilot shortage on regional airline industry; and major airlines expanding training centers and eliminating degree requirements for pilots to address pilot shortage.

We recognize the importance of the field of aviation and related careers, and the significant contributions from immigrants who are pilots in the United States; however, merely working in the aviation field as a pilot, pilot instructor, or flight safety advisor for a commercial airline is insufficient to establish the national importance of the proposed endeavor. Instead of focusing on the importance of an industry or the need for workers in a field, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. The Petitioner has not established how his proposed endeavor would affect national pilot employment levels or the U.S. economy more broadly consistent with national importance. The industry reports and articles submitted do not discuss how the Petitioner working as in a management pilot position for a commercial airline will overcome the shortage of pilots and aviation workers in the United States or impact the U.S. economy. Moreover, the U.S. Department of Labor through the labor certification process directly addresses such shortages of qualified workers.

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. Similarly, the record does not demonstrate that the Petitioner's work of instructing pilots, flying aircraft, and conducting flight safety for a commercial airline has the potential to substantially benefit the field of aviation more broadly, as contemplated by Dhanasar: "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." Id. The evidence does not suggest that his work in a management pilot position for a commercial airline would extend beyond his prospective employer and have a broader impact on the field of aviation.

Beyond general assertions, the Petitioner has not demonstrated that the work he proposes to undertake offers the claimed broader implications for his field or for the U.S. economy. His claims depend on numerous factors, and he did not offer a sufficiently direct evidentiary tie between his proposed work in a management pilot position for a commercial airline and its impact on his field or the U.S. economy. Statements and claims alone are not sufficient to demonstrate the national importance of his proposed endeavor. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner's burden of proof. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998). The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. While the Petitioner expresses his desire to contribute to the United States and the field of aviation, he has not established with specific, probative evidence that his endeavor has the claimed potential to extend beyond his prospective employer to impact the field or the U.S. economy. As such, the Petitioner has not demonstrated by a preponderance of the evidence that his proposed endeavor is of national importance.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the Dhanasar precedent decision, he has not demonstrated eligibility for a national interest waiver. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the

Petitioner's appellate arguments and eligibility under the second and third prongs of Dhanasar. See INS v. Bagamasbad, 429 U.S. at 25; see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an individual of exceptional ability. Furthermore, since the Petitioner has not established eligibility under the requisite first prong of the Dhanasar analytical framework, he is not eligible for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.