U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33658120

Date: OCT. 25, 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 a member of the professions holding an advanced degree. *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 for classification as a member of the professions holding an advanced degree. The Director also concluded that the Petitioner had not established 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). A "profession" is one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] The listed occupations are architects, engineers, lawyers, physicians, surgeons, and certain teachers.

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,[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.

II. ANALYSIS

As a preliminary point, we note that the Director's decision often lacks detailed discussion of record evidence. At the same time, the purpose of an appeal is to specifically identify errors in the adverse decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The Petitioner, on appeal, alleges procedural errors such as imposing novel evidentiary requirements, but the Petitioner does not elaborate on these points. The Petitioner makes the general assertion that the Director did not fully consider the evidence of record. Where appropriate, we will discuss key examples of record evidence below. Ultimately, the Petitioner's appeal does not identify errors of fact or law that would justify withdrawing or overruling the Director's decision.

The Director determined that the Petitioner did not establish eligibility for classification as a member of the professions holding an advanced degree. We will reserve this issue, because the appeal is dismissible on other grounds.[3]

In his native Venezuela, the Petitioner earned a bachelor's degree in "science and military arts (aviation option)" in 1994, and served in the Venezuelan Air Force from 1994 to 2005. From 2005 to 2019, the Petitioner worked as an airplane pilot, first for a utility company, flying work teams, and then for private carriers. The Petitioner has been in the United States since 2019, when he entered as a B-2 nonimmigrant tourist.

A significant issue in this proceeding is that the Petitioner has not consistently described his proposed endeavor. The Petitioner stated that his proposed endeavor is to work as an aircraft pilot and "also train others in the field." At various times, the Petitioner has indicated that he seeks employment as a "commercial pilot" and as an "airline pilot," but the two terms are not synonymous; they describe related but separate occupations. We will address this issue in more detail further below.

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[2] *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).

[3] *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). We note that the Director's decision did not touch upon the key question of whether the Petitioner's intended occupation qualifies as a profession under 8 C.F.R. § 204.5(k)(2), by requiring a U.S. baccalaureate degree or a foreign equivalent degree as the minimum requirement for entry into the occupation. The Petitioner submitted materials from the U.S. Department of Labor, indicating that commercial pilots do not generally need baccalaureate degrees.

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

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

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 Matter of 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.

The Petitioner submitted copies of media articles discussing a shortage of airline pilots, but these materials do not specifically describe the Petitioner's proposed endeavor or its potential impact. Rather, these materials amount to background information about the general subject. The Petitioner, however, must establish the merit and national importance of the specific proposed endeavor; it cannot suffice for the Petitioner to establish the overall impact and importance of a particular subject, occupation, or field.

In an expert opinion letter, a lecturer at [redacted] stated that the Petitioner "would work in the United States in an area of substantial merit and national importance." The individual asserted a shortage of airline pilots and described "[t]he Aviation Industry in Latin America." These are broad and general issues, well beyond the scope of the Petitioner's proposed endeavor to work as a pilot. The Petitioner must establish the national importance of his specific proposed endeavor, not that of a broad "area" such as aviation. Assertions about the industry as a whole do not establish the national importance of the specific proposed endeavor within that industry. The author of the letter did not explain how the Petitioner's employment as a pilot would alleviate the airline pilot shortage or otherwise broadly impact aviation in the United States at a nationally important level.

In a request for evidence (RFE), the Director stated that the Petitioner had not explained "how one pilot will improve a national shortage or will trigger substantial positive economic impacts." The Director also compared the Petitioner in the present case to the petitioner in *Dhanasar* who had not established the national importance of working with small groups of students. *Id.* at 893.

The Director explained: "In determining national importance, 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 shortage of pilots "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." We note that the purpose of the labor certification process is to show that qualified U.S. workers are not available to fill specific positions. The unavailability of such workers is generally not, itself, grounds for waiving that process.

In response to the RFE, the Petitioner stated that he "will use his aircraft and personnel management tactics to expand the reach and scope of various airlines in the United States," thereby "allowing companies to maximize their economic capacities." The Petitioner repeated arguments about labor shortages and the overall importance of the U.S. aviation industry, and asserted that the proposed endeavor "will have numerous ripple effects for other businesses and industries throughout the U.S. and globally."

The Petitioner indicated that he would seek employment with major U.S. airlines and "will also work in regional, national, and/or cargo airlines." As we will discuss further below, the Petitioner initially indicated on Form I-140 that he sought employment as a commercial pilot, rather than in the separate occupation of an airline pilot. Furthermore, if the Petitioner were to work for multiple employers in the industry, his work would not have the same impact as multiple pilots. Rather, he would benefit each employer for a shorter period of time. A claimed intention to seek serial employment, therefore, does not increase the potential impact of the proposed endeavor in this matter.

The Petitioner asserted that "he will also help alleviate the tremendous industry shortage by offering his training expertise." The Petitioner did not show that he would train sufficient pilots to affect this shortage at a nationally important level.

In the denial notice, the Director stated: "The petitioner . . . has not established how the beneficiary's proposed endeavor stands to impact the regional or national population at a level consistent with having national importance. Nor has the petitioner demonstrated the beneficiary's work would have broader implications for the aviation field."

On appeal, the Petitioner asserts that his "proposed endeavor as an Airline Pilot holds significant national importance due to the critical role airline pilots play in the aviation industry." The Petitioner also states that he had previously submitted "Industry Reports and Articles . . . , detailing the substantial merit and national importance of the aviation industry in the United States." As explained above, the Petitioner must establish the national importance of his specific endeavor, rather the industry in which he intends to work. The Petitioner has not met his burden of establishing that his individual specific proposed endeavor rises to the level of national importance.

We agree with the Director's determination that the Petitioner has not established the national importance of his proposed endeavor. We also note that the Petitioner has not consistently described that endeavor, particularly with regard to whether he seeks employment as a commercial pilot or as an airline pilot.

On the Form I-140 petition, the Petitioner specified his intended job title as "commercial pilot," with SOC (Standard Occupational Classification) Code 53-2012. The "Nontechnical Job Description" on the form specified that individuals in that occupation "pilot and navigate the flight of fixed-wing aircraft on nonscheduled air carrier routes, or helicopters," and that the occupation "requires [a] commercial pilot certificate." In this way, the Petitioner affirmed in three different ways on the petition form that he seeks employment as a commercial pilot, an occupation consistent with his documented past experience.

But some of the Petitioner's statements indicate that he seeks employment as an *airline* pilot, which is a different occupation with its own SOC code, 53-2011. The Petitioner submitted printouts from the Department of Labor's O*NET website, both for "Commercial Pilots" and for "Airline Pilots, Copilots, and Flight Engineers." These materials show that airline pilots, unlike commercial pilots, fly "usually on scheduled air carrier routes," and there are different requirements for the two types of pilots.

The Petitioner initially submitted job offer letters from three companies that provide private or charter flights. The submitted materials show that such work would fall under the category of a commercial pilot, rather than an airline pilot.

The Petitioner also referred to "experience as an airline pilot," although, as noted above, an airline pilot falls under a related but separate occupational classification from a commercial pilot, which is the occupation that the Petitioner specified in three different ways on Form I-140. The materials showing the Petitioner's past experience indicate that he flew charter flights and private flights, rather than scheduled airline flights.

The Petitioner must propose a "specific endeavor." *See Matter of Dhanasar*, 26 I&N Dec. at 889. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. *See, generally,* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. An intention to work in some aspect of aviation, either as a commercial pilot or as an airline pilot, is not sufficiently specific. This lack of specificity impairs the Petitioner's ability to establish eligibility by a preponderance of the evidence.

Because the Petitioner has not met his burden of proof to show that he satisfies the "national importance" element of the *Dhanasar* national interest test, detailed discussion of the remaining prongs cannot change the outcome of this appeal. Therefore, we reserve argument on the other prongs.

III. CONCLUSION

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.