U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33947010

Date: SEP. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot and CEO, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 qualified for EB-2 visa classification. The Director further concluded the record did not support a finding that 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.

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).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, 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).

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 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. Our precedent decision in *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 intends to come to the United States and open a branch of a pilot training company, which he founded in Slovakia in 2000. The Petitioner asserts that he is eligible for the EB-2 classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. Specifically, he states he is a "pilot with the addition of extraordinary ability in the ability to manage airports as CEO and turn indebted airports into profitable ones" and "is CEO of [a] private pilot training company which he owns." His proposed endeavor is "to teach and train pilots which will contribute to the employment of U.S. workers and broadly enhance societal welfare" in the United States. He claims that the expansion of his existing pilot training company in the United States "will generate new resources needed for its operation and development". The Petitioner contends his professional background gives him the necessary experience to succeed in this endeavor.

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[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[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.

[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).

To qualify for a national interest waiver, the Petitioner must first show that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act, either as an advanced degree professional or an individual of exceptional ability. The Director denied the petition, in part, determining that the Petitioner did not meet the EB-2 classification as an advanced degree professional or an individual of exceptional ability. The Director further determined that although the Petitioner established the substantial merit of his proposed endeavor, he did not establish its national importance, that he is well-positioned to advance that proposed endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer. We agree that the Petitioner has not established that his proposed endeavor has national importance and will dismiss the appeal accordingly.[5]

The Director found that the Petitioner did not establish that his proposed endeavor met the national importance element of the first prong of the *Dhanasar* framework. Specifically, the Director determined the Petitioner did not establish his proposed endeavor would have broader implications to the field of aviation or have significant potential to employ U.S. workers or otherwise have substantial positive economic effects such that he established its national importance. The first prong of *Dhanasar*, 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. *Dhanasar*, 26 I&N Dec. at 889.

The record does not establish the Petitioner's proposed endeavor will have substantial positive impacts on the U.S. economy. Although any basic economic activity has the potential to positively impact a local economy, the Petitioner has not demonstrated how the economic activity directly resulting from his proposed endeavor would rise to the level of national importance. An endeavor may have national importance if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . .." *Id.* at 890. The Petitioner seeks to come to the United States to extend his existing venture – a pilot training company. He asserts that his proposed endeavor of working as a pilot instructor and CEO will generate jobs for U.S. workers and positively contribute to the U.S. economy. In his business plan, the Petitioner indicated the U.S. based branch of his company would generate a cumulative 14 jobs and $17 million dollars in revenue by its fifth year of business. However, the business plan does not provide sufficient explanation for the basis of these projections. Further, even if sufficient basis were provided for the proposed endeavor's revenue and job creation projections, these figures do not establish that the Petitioner's company would operate on a scale rising to the level of national importance. The Petitioner has not explained how his proposed employment metrics and revenue would have impact beyond his business's area of intended operations. Upon de novo review, the Petitioner did not establish his proposed endeavor would have substantial positive economic effects.

Further, the evidence submitted by the Petitioner does not establish his proposed endeavor would operate on such a large scale as to have a national impact on the aviation industry. When determining

[5] As the Petitioner has not overcome the Director's determination that the record did not establish a waiver of the required job offer, and thus of the labor certification, would be in the national interest, we need not address whether he is eligible for the EB-2 classification as an advanced degree professional or an individual of exceptional ability.

the national importance of a proposed endeavor, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; rather, we focus on "the specific endeavor that the foreign national proposes to undertake." *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.* Although the Petitioner has provided evidence of his professional experience, including his resume, an article about his professional success, and letters of reference, the inquiry in the first prong of the *Dhanasar* framework focuses on "the specific endeavor that the foreign national proposes to undertake." *See id.* The Petitioner's skills, knowledge, and prior work in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *See id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. The Petitioner does not offer evidence to show how his proposed endeavor would impact the aviation industry or otherwise would operate on such a scale as to rise to a level of national importance. Although the Petitioner's specific venture has the potential to provide valuable services to his clients, he did not establish his specific proposed endeavor will have substantial national implications or have a broader impact beyond the individuals directly served by his company. The Petitioner also has not established that his proposed endeavor stands to significantly reduce a national labor shortage of airline pilots as claimed. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. While we acknowledge the importance of the field of aviation, the Petitioner did not establish his proposed endeavor would have broader implications to the overall field to establish its national importance. *See id.* at 893.

Thus, because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's additional appellate arguments regarding his eligibility for a discretionary waiver under the *Dhanasar* analytical framework and his eligibility for EB-2 classification. *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).

## III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.