U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33383106

Date: SEPT. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic and technician, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 the Petitioner had not established eligibility for 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. 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. 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 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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).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

As it relates to the national interest waiver, the first prong relates to substantial merit and national importance of the specific proposed endeavor. Dhanasar, 26 I&N Dec. at 889. At initial filing, the Petitioner's cover letter stated that his proposed endeavor is to provide his services in the field of aircraft manufacturing in the United States. The letter further states:

> [The Petitioner] will provide aviation companies with several different services, including interior inspection for executive jets. He will also provide consulting and training services to companies and individuals in the U.S. market. Through those services, he will contribute to the U.S. economy by increasing the productivity and efficiency of aircraft manufacturing consulting and training activities. He will help companies receive certifications, maintain quality, comply with regulations and succeed in the aviation business industry.
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> The petitioner's experience under consideration fulfills this lack of professionals. His proposed endeavor offers his intimate knowledge in the field, where, with his extensive training and hands-on experience he is highly qualified to teach and implement his methods and strategies to other U.S. professionals.

In response to the Director's request for evidence, the Petitioner provided a January 2024 professional personal statement which described the Petitioner's employment history and aspirations. He states that at his current company, which he describes as the "future of business aviation in the USA," he "joined as an interior technician, but now [he's] taken the first step up to team leader for the assembly and disassembly of executive jets" and he is also responsible for "the area that manufactures executive seat foams, as well as being a trainer for new employees."

The Petitioner states that his short-term goal at the company is to "move up to Production Supervisor…In the medium term, [he will] be Production Manager at [his current company]."

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance, that he was not well-positioned to advance the proposed endeavor, and that on balance it would not be beneficial to the United States to waive the requirements of a job offer and labor certification. On appeal, the Petitioner challenges the Director's findings on all three Dhanasar national interest waiver prongs. In particular he maintains the national importance of his proposed endeavor of "[w]orking as an Aircraft Interior Technician in Florida, where [he] intends to work." And, the Petitioner asks for reconsideration of the adverse finding on whether the Petitioner is well-positioned for the endeavor because the Director previously found that he was well-positioned for the same endeavor in a prior denied 2021 application for a national interest waiver for the same proposed endeavor.

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.

Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the Dhanasar framework. In denying the petition, the Director acknowledged that the Petitioner's endeavor is to work in the field of aircraft maintenance technician. The Director determined, however, that the Petitioner did not provide sufficient evidence to show that his endeavor would broadly impact his field or that it has significant potential to employ U.S. workers or otherwise benefit the U.S. regional or national economy. The Director concluded that the record lacked evidence showing that the benefits from the Petitioner's endeavor would result in "substantial positive economic effects" as contemplated in Matter of Dhanasar, 26 I&N Dec. at 890.

On appeal, the Petitioner reiterates the same arguments previously presented to the Director, asserting the national implications of aircraft interior technicians, including safety and security, passenger experience, economic growth, competitiveness in the global market, and environmental sustainability. Here, the Petitioner must demonstrate the national importance of his specific, proposed endeavor of working within his field rather than the overall importance of the aviation industry and other related fields and topics.[2] In Dhanasar, we 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 istated 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 addition, the Petitioner contends that he presented an expert opinion letter asserting the proposed endeavor has national importance. The letter, however, makes the same arguments, discussed above, relating to the importance of the aviation industry and related topics rather than focusing on the national importance of the Petitioner's specific, proposed endeavor of working for an aviation company or business as a mechanic or technician. Furthermore, the letter does not explain how the Petitioner's particular employment would have broader implications for the United States. 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. Dhanasar, 26 I&N Dec. at 889. Here, the Petitioner did not demonstrate how his proposed endeavor of working for an aviation business or within the aviation industry largely influences the field and rises to the level of 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.

[2] The Petitioner's arguments relate more to the substantial merit aspect of the proposed endeavor rather than the national importance part.

Although the Petitioner indicates his submission of his professional plan, the Petitioner did not show how his particular employment services stand to sufficiently extend beyond his prospective employer, to impact the aviation industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner's discussion of his skills, expertise, abilities, and prior accomplishments relate to the second prong of the Dhanasar framework. The second prong of Dhanasar "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor he proposes to undertake has national importance under Dhanasar's first prong.

Finally, the Petitioner did not show how his employment would have significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not reflect any benefits to the U.S. regional or national economy resulting from his employment would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Id. at 890.

The Director found that the Petitioner did not establish he is well-positioned to advance the proposed endeavor finding that the record did not establish the Petitioner's knowledge and performance in his field of aircraft maintenance is above and beyond that normally encountered by other individuals in a similar position in the same field. The Director acknowledged the expert opinion letter that the Petitioner provided.

We acknowledge the Petitioner's argument that the Director found that the Petitioner was well-positioned for his proposed endeavor in a separately-filed petition for a national interest waiver. However, as noted above, we review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), and we are not bound by the Director's analysis or conclusions in this or any other proceeding. We note that the separate petition referenced by the Petitioner was denied, the Petitioner filed an appeal of that denial before the AAO, and we dismissed that appeal without addressing the second prong regarding whether the Petitioner was well-positioned to advance his proposed endeavor. Thus, we are addressing this issue for the first time in the present appeal.

Upon de novo review, we agree with the Director's decision currently on appeal that the Petitioner has not established he is well-positioned for his proposed endeavor. As discussed above, the expert

opinion letter discusses the importance of the aviation industry and discusses the Petitioner's employment history and credentials, however the expert opinion letter does not establish that the Petitioner is well-positioned to advance the proposed endeavor. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. Matter of Caron Int'l, Inc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in anyway questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id.

Here, the expert opinion letter restates large portions of the claims the Petitioner made concerning the national importance of the proposed endeavor, but it does not add sufficient analysis or corroborating details to support the restated claims. As discussed above, the Petitioner joined his company as an interior technician and the Petitioner notes in his own statement that he has taken "the first step up to team leader" and trainer for new employees. His professional personal statement of January 2024 sets forth a short-term goal to move up from team leader to Production Supervisor and medium-term goal to be a Production Manager. The Petitioner did not set forth a long-term goal in his professional personal statement, however the expert opinion letter states the Petitioner "will also provide consulting and training services to companies and individuals in the U.S. market." Having attained only the lowest supervisory level at his current firm, the Petitioner has not met his burden to show he is well-positioned to advance his endeavor to provide consulting and training services to companies and individuals in the U.S. market. Moreover, the professional personal statement reflects an intention to continue working in his current company, not provide consulting services. A petitioner must support assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

We also note that it is speculative whether the Petitioner will meet his short and medium-term goals. The Petitioner must establish eligibility for the waiver at the time of his initial filing. See 8 C.F.R. § 103.3(b)(1) (stating that a petitioner must establish eligibility for the requested benefit at the time of filing). See also Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

Because the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the third Dhanasar prong. 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

As the Petitioner has not met the requisite first and second prongs of the Dhanasar analytical framework, we conclude that he has not demonstrated eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.