



**U.S. Citizenship
and Immigration
Services**

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

In Re: 22651324

Date: NOV. 30, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner 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. *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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver. In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen’s proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s 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.

The third prong requires the petitioner to demonstrate 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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the noncitizen’s qualifications or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen’s contributions; and whether the national interest in the noncitizen’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together,

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

indicate 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.²

II. ANALYSIS

The Director determined that Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner, an airline transport pilot and captain, claimed that his “experience as an aviation pilot with small and large planes, with regional and international exposure on commercial, cargo, and corporate jet companies, has put [him] in a privileged position to work and contribute to the United States.” With respect to his proposed endeavor, the Petitioner initially indicated that he intends to work in the United States as a pilot. The Petitioner stated that due to a technician and pilot shortage in the U.S. aviation industry, “having a top-level aviation professional with an emphasis on training and safety supervision” such as himself “is of national importance and has substantial merit to the United States.”

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information and evidence regarding his proposed endeavor in the United States. In response, the Petitioner clarified that his proposed endeavor consisted of several concurrent goals, including working for an airline as a pilot, becoming an aviation instructor, and opening a flight school. The Petitioner indicated that he intends to seek employment as a pilot with [redacted] based on the advice and recommendation of a professional contact currently employed with that company who believed him to be a qualified candidate. Specifically, the Petitioner stated that “[e]very time an [redacted] Boeing 747 takes off, I will be one of the pilots responsible for carrying up to 292,400 of payload, or up to 470 people aboard one of their passenger version aircraft.” Noting that [redacted] is the most significant transportation contractor for the U.S. Department of Defense, the Petitioner claimed that his work as a pilot for [redacted] would involve “ferry[ing] troops from the United States to the military bases around the world and vice-versa.” The Petitioner concluded that his proposed endeavor from a military perspective had national importance because “the defense of the country and the maintenance and growth of the influence of the United States military around the world is a matter of national interest.”

He further claimed that his work as a pilot for [redacted] would yield humanitarian benefits, noting that [redacted] frequently provided humanitarian aid and relief to areas affected by earthquakes, epidemics, and similar disasters. He further claimed that because [redacted] was an airline that traveled to all continents except Antarctica, his work as a pilot for [redacted] would benefit worldwide commerce by permitting him to deliver products including machinery, pharmaceuticals, and medical equipment to countries in need. Finally, he concluded that [redacted] is responsible for the operation of Boeing’s fleet of Large Capacity Freighters, which consist of 747s modified to accommodate the transport of large parts of Boeing aircraft to and from its factories around the world.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The Petitioner also indicated that he intended to start a flight school and become an aviation instructor. In support of this assertion, he submitted a business plan for his proposed company, [REDACTED] indicating that it would be formed as a Florida corporation and he would be its sole owner. The Petitioner indicated the company would provide aviation and flight training for vocational and recreational purposes in [REDACTED] Florida. The plan indicated that in the company's initial phase, it expected to hire three to five pilots to serve as trainers, and would also appoint an administrative assistant to manage client intake and customer service. The plan also indicated that a \$250,000 investment would initiate operations and cover the purchase of four airplanes, and remaining operations would be funded "with equity provided by the owners without debt." The plan projected sales growth in the amount of \$956,000 by the fifth year of operations.

The Petitioner also provided information pertaining to the U.S. aviation industry and the aviation industry's effect on the U.S. economy. For example, the Petitioner submitted a report from the Federal Aviation Administration as well as various industry articles discussing the nature and status of the U.S. aviation industry. The Petitioner also submitted letters of recommendation from colleagues and acquaintances in the field attesting to his background and qualifications as a pilot.

In the decision denying the petition, the Director summarized the Petitioner's proposed endeavor as working in the United States as an airline pilot, and determined that his endeavor had substantial merit. However, the Director concluded that the Petitioner had not established the national importance of his proposed endeavor, noting that he had not shown that his proposed endeavor had significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for the United States. The Director further determined that the Petitioner had not shown that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner reasserts that the shortage of pilots in the U.S. aviation industry has resulted in the displacement of pilots from smaller airlines and flight schools, thus resulting in a large amount of turnover in the aviation industry, specifically in the area of flight instruction. The Petitioner asserts that his proposed work as both a pilot and instructor will be in the national interest of the United States given the need for qualified individuals in the field due to pilot shortages, and that his establishment of a flight school will help to train new pilots in response to the current shortage in the industry. The Petitioner again refers to the business plan for his proposed company, [REDACTED], noting that the plan clearly outlined the manner in which the company would substantially impact the U.S. aviation industry. In conclusion, the Petitioner claimed that his proposed endeavor "will have substantial positive economic effects , particularly in an economically depressed area."

Preliminarily, we note that the Petitioner proposes to contribute to the aviation industry by applying for a job with [REDACTED] which would allow him to continue his career as a captain. His proposed endeavor also includes serving as a flight instructor as well as establishing a flight training academy of which he would be the sole owner. The Petitioner did not provide a timeline for when he would occupy each of these roles and it is not apparent whether securing a position in any of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing all of these positions either simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has both substantial merit and national importance because the Petitioner's proposed endeavor has not been clearly defined. Despite the Director's finding to the contrary, the Petitioner has not submitted persuasive evidence to support a

finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish his eligibility by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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.” 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.

Here, although the Petitioner has many ideas, it remains unclear as to what specifically his proposed endeavor involves. We do not know if he intends to perform all the functions he describes or whether he will perform in only the first job he secures. In addition, we have little clarity on which position, if any, he will obtain. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” See *id.* at 889. While it may include one or more of the job ideas outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its substantial merit and national importance.

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. Initially, we note that while the Petitioner may fly nationally or internationally, simply having a global route does not establish that the endeavor has a global impact. To the extent that the Petitioner’s proposed endeavor can be understood, we conclude that he has not substantiated how his specific work in the aviation industry will address a pilot shortage or positively impact the economy. Specifically, how one pilot will improve a national shortage or will trigger substantial positive economic impacts has not been explained. Even assuming the Petitioner chooses to pursue his ideas concerning working as a flight instructor or his entrepreneurial goals of establishing a flight academy, which may affect others’ careers in addition to his own, he has not provided sufficient information of how his services in these areas would rise to the level of national importance. While such endeavors may impact the individual students, pilots, employers, or airlines that the Petitioner works with, the national importance of this work has not been adequately explained or substantiated. Similarly, 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.

The Petitioner argues that his proposed endeavor has national importance because the United States faces a significant national and potentially global pilot shortage. In addition, the Petitioner argues that pilots and the field of aviation are extremely important to the economy and that his proposed endeavor will offer substantial positive economic impacts. In support of both his arguments concerning pilot shortages and positive economic impacts, he offered numerous articles about the flight industry, its economic implications, and the challenges faced by airlines and pilots. While these articles provide useful background information, they are of limited value in this matter, as the Petitioner’s specific proposed endeavor is unclear. Furthermore, 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.” *Id.* at 889. For the above stated reasons, the Petitioner has not offered sufficient evidence to corroborate his claims that the proposed endeavor has national importance.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance. Because the Petitioner has not provided sufficient information and documentation regarding his proposed endeavor, we cannot conclude that he meets the first prong of the *Dhanasar* precedent decision. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.