U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22720786

Date: OCT. 07, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner qualifies for the underlying classification. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor has national importance. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director applied an incorrect standard of proof, did not review each piece of evidence properly, and erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. –
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> > (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.
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> > (B) Waiver of job offer –
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> > > (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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, 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). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director determined that the Petitioner offered sufficient evidence to establish that he has the equivalent of an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

On his Form I-140, the Petitioner described his work as navigating the flight of a fixed-wing, multi-engine aircraft for transport of passengers. He stated in his initial professional plan and statement that he would "pursue positions within airline companies in the [United States]." In other parts of the record, the Petitioner emphasized that he "intends to advance his career as a [p]ilot, developing the field of aeronautics by using his expertise in flight operations, flight training and co-pilot evaluations, flight safety, and aircraft maintenance to help fill the shortage of pilots and improve the efficiency of the U.S. aviation and aeronautics industries." Regarding the national importance of his proposed endeavor, the Petitioner stated the endeavor will "substantially benefit the U.S. economy and national interest, considering the airline industry's national importance. He further explained that his endeavor will potentially impact the United States in the following ways:

- Fill positions as a pilot that are vacant due to the shortage of airline pilots;
- Serve as an accredited examiner at flight school;
- Train newer generations of pilots;
- Monitor engines, fuel consumption, and other aircraft systems to improve flight efficiency; and
- Generate tax revenue.

The Petitioner further claimed his endeavor will create broad implications due to the ripple effects of his activities. He explained verbatim that:

> [H]is work will benefit the airlines; the governments, corporations, and individuals that require the cargo he carries on his flights; and will have numerous ripple effects for other businesses and industries throughout the [United States] and globally due to the increase of demand and air travel on a global scale. The successful transportation of

cargo in the form of goods within the [United States] results in economic benefits such as the generation of more revenue, and ultimately increase the flow of money in the [United States] at the national level, thus contributing to the U.S. gross domestic product.

In support, the Petitioner submitted numerous articles on the shortage of airline pilots, industry reports on aviation, a national interest waiver eligibility advisory opinion, recommendation letters, and his professional plan and statement, among other pieces of evidence. While we do not discuss each piece of evidence individually, we have reviewed and considered each one. 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. at 889.

The articles and reports evidence the shortage of airline pilots; however, as the Director explained, "there is a labor certification process in place to addresses shortages in fields. Simply working in a field where there is a shortage falls short of showing that the [Petitioner's] proposed endeavor has a prospective national impact." Similarly, while the articles and reports provide helpful background information and establish the substantial merit of the Petitioner's proposed endeavor, we nevertheless conclude that the none of the reference materials discuss the Petitioner's specific proposed endeavor. As the Director explained, 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 id. at 889. We acknowledge the importance of the aviation and aeronautics fields and also of addressing the nation's shortage of pilots; however, the Petitioner has not sufficiently explained how his work as a pilot for U.S. airline companies would resolve the pilot shortage or produce an impact rising to the level of national importance.

While we acknowledge the Petitioner's claim that the Director did not consider the letters of support he provided from former classmates and professional acquaintances in the field, the record does not support such a conclusion. Rather, the decision reflects a specific consideration of the letters, as evidenced by quotations from the letters and the conclusion that the letters demonstrated that the Petitioner "is an accomplished pilot," but that "it has not been shown that the proposed endeavor has national importance." In our review, we likewise conclude that the recommendation letters praise the Petitioner's personal and professional qualities, as well as demonstrate his impressive experience and skill sets. While the authors of the letters recognized the Petitioner's past accomplishments, none of the letters described the proposed endeavor or explained why it has national importance. For instance, [redacted] a former classmate in the [redacted] Air Force Academy, mentioned the Petitioner's achievements in the aviation field, but he did not corroborate his statements with examples that demonstrated the impact of the Petitioner's work to the field. Rather, [redacted] provided only examples of the Petitioner's accomplishments within his career, which appear to have benefitted his employers, but not to have reached beyond his employers to the aviation field overall.

The record contains evidence that the Petitioner served in the military and received accolades, letters of appreciation, congratulations, and promotions for his work. Such evidence demonstrates the Petitioner's distinguished service, honor, and merit, but it does not support a finding of impact to the field of aviation. The Director considered that the proposed endeavor also includes the teaching and

training of other pilots. However, 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. As such, the Director acknowledged the importance of training others in the field but explained that "[m]erely showing that the [Petitioner] has trained pilots and intends to continue to do so in the United States does not rise to the level of national importance."

Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the letters do not support the Petitioner's eligibility under the first Dhanasar prong as they do not discuss the proposed endeavor or explain why it has national importance.

The Petitioner submitted an advisory opinion from [redacted] a professor in the department of aviation at [redacted] University, concerning the Petitioner's eligibility for a national interest waiver. In the national importance section of [redacted] opinion, he primarily discussed statistics on the U.S. pilot shortage, the aviation industry, as well as the robust and high-quality nature of the Latin American aviation industry. The advisory opinion does not contain a discussion of the proposed endeavor or its national importance but rather emphasizes the importance of the aviation field. Furthermore, [redacted] repeated much of the information the Petitioner already provided in his résumé without adding sufficient independent analysis. 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 any way 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 advisory opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

The Petitioner stated that he intends to "pursue positions" in the United States and to "advance his career." However, the purpose of a national interest waiver is not to enable a petitioner to engage in a U.S. job search. Further, such statements suggest a proposed endeavor impact more for the Petitioner than for the nation. While the Petitioner's services as a pilot will benefit his employer and the passengers he transports, the evidence does not support a finding that the Petitioner will meaningfully diminish the airline pilot shortage as a result of his proposed endeavor. The Petitioner stated in his updated professional plan and statement that he has made significant contributions to the aviation industry. However, he did not corroborate this claim with examples or evidence of how he has impacted the industry. The Petitioner instead relied upon his career accomplishments to establish his impact to the industry. While his career accomplishments illustrate that he performed well in his positions, they do not support a finding that he impacted the field.

On appeal, the Petitioner contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies

primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision.

The Petitioner repeatedly relies upon arguments related to the importance of the field, rather than the importance of the proposed endeavor. As we explained, merely working in an important field is insufficient to establish the national importance of the proposed endeavor. In addition, the Petitioner relies heavily upon his professional qualifications, his work history, and his experience to assert the national importance of the proposed endeavor. However, the Petitioner's expertise relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong.

We conclude that the Petitioner has not offered sufficient evidence to corroborate his claims that the proposed endeavor has national importance. Even considering the claimed ripple effects, it is not apparent that the Petitioner's proposed endeavor activities would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Dhanasar, 26 I&N Dec. at 890.

The Petitioner claimed that the Director erred in not analyzing the evidence under the remaining Dhanasar prongs. Specifically, he argues that the Director erroneously determined that analyzing them would serve no meaningful purpose. However, the record reflects that the Director provided analysis under all three prongs when issuing a notice of intent to deny (NOID). Furthermore, the Director specifically stated in the decision that "[a]ll submitted evidence was considered in this decision," indicating that the Petitioner's NOID response was incorporated into the record and duly considered. As the Petitioner must establish eligibility under each Dhanasar prong, a failure to do so under any single prong would necessarily negate eligibility for a national interest waiver overall. Therefore, while we acknowledge the Petitioner's argument that the Director erred in not further analyzing the Petitioner's eligibility, the Petitioner has not explained how providing such analysis would have changed the outcome of the Director's decision.

III. CONCLUSION

The Petitioner has not established that his proposed endeavor has national importance. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would therefore serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. 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).

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. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.