U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22681420

Date: JAN. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks employment-based second preference (EB-2) immigrant classification as as a member of the professions holding an advanced degree 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 record established that 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. 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 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.

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).[1] *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,[2] 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.[3]

II. ANALYSIS

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The next 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 under the *Dhanasar* analytical framework.

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.

In denying the petition, the Director decided that while the Petitioner's endeavor has substantial merit and that he is well-positioned to advance his endeavor, the Petitioner had not demonstrated the national importance of his particular proposed endeavor, or 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner indicated that he intended to work as a pilot in the United States, noting that he would "pilot and navigate the flight of fixed-wing,

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[1] 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) (*NYSDOT*).

[2] *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).

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

multi-engine aircraft, usually on scheduled air carrier routes." The Petitioner indicated that he intends to work for U.S. airlines, using his skill set "to help curtail the shortage of pilots in the U.S." He further claimed that in addition to working as a pilot, he "can work as a flight instructor for the aviation sector and serve as a seasoned pilot in flight training centers and schools." He further stated that his proposed endeavor will potentially impact the United States in the following ways:

- Fill a position as a pilot that is vacant due to the shortage of airline pilots;
- Serve as a flight instructor at flight schools;
- Train newer generation of pilots;
- Monitor engines, fuel consumption, and other aircraft systems to improve flight efficiency; and
- Generate tax revenue.

The Petitioner also submitted his resume, recommendation letters, and copies of articles and reports pertaining to the aviation industry.

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 submitted an updated professional plan and statement, discussing his educational background and reciting his experience in the industry and the manner in which such experience has imparted expertise to him in the field. He further explained that his experience in the field of aeronautical sciences and commercial aviation would benefit U.S. aviation companies, noting that his experience as both a pilot and a flight instructor would help alleviate the shortage of commercial and private airline pilots in the United States. The Petitioner also provided further information pertaining to the U.S. aviation industry and the aviation industry's effect on the U.S. economy, including additional industry articles discussing the nature and status of the U.S. aviation industry, as well as additional letters of recommendation from colleagues and acquaintances in the field attesting to his background and qualifications as a pilot.

Additionally, a letter from the Petitioner's counsel submitted in response to the RFE discusses the industry articles and reports submitted in support of the assertion that the Petitioner's expertise in the industry could potentially mitigate the shortage of pilots nationwide. According to counsel, the Petitioner is well qualified to serve both as a pilot and flight instructor based on his 25 years of experience in the field, and thus his endeavor will lessen the effects on the pilot shortage within the U.S. aviation industry. Counsel further claimed that the Petitioner's endeavor will substantially benefit the U.S. economy, U.S. societal welfare, and overall national interests, considering the widespread importance of the aviation industry.

In the decision denying the petition, the Director determined 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 asserts that he has established, by a preponderance of the evidence, the national importance of his work, and that the Director's decision was in error because it "applied a stricter standard" of proof. With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner further relies on the shortage of pilots in the U.S. aviation industry, and asserts that his proposed work as both a pilot and flight instructor will be in the national interest of the United States given the need for qualified individuals in the aviation industry due to such shortages. He claims that beyond filling a vacant pilot role, his ability to also serve as a flight instructor will help fill additional vacancies in the industry by training new pilots. In conclusion, the Petitioner claims that his proposed endeavor has national importance and substantial merit because "in a multifold approach it will help curtail an evident labor crisis in the field of aviation, which, in turn, is negatively affecting other commercial, societal, and economic areas."

Preliminarily, we note that the Petitioner proposes to contribute to the aviation industry by applying for jobs as a pilot with various U.S. airlines. His proposed endeavor also includes serving as a flight instructor. 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 either of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing these roles 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. at 376.

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, it remains unclear as to what specifically the Petitioner's proposed endeavor involves. We do not know if the Petitioner intends to perform both 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 both of the positions 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.

Throughout the record, the Petitioner points to his background, education, and experience in his field, noting on appeal that he has extensive professional experience supported by extensive flight training and certificates, and that he holds the highest ranked license in the Federal Aviation Administration. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890.[4] The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. 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, as a pilot, may fly nationally or internationally for private or commercial U.S. airlines, 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, 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 claims that his proposed endeavor has national importance because the United States faces a significant national and potentially global pilot shortage. In addition, the Petitioner asserts 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.[5] Furthermore, in determining national importance, the relevant question

[4] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

[5] We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the status of the U.S. aviation industry impacts many different industries, such as U.S. trade and commercial operations. On

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. As discussed above, 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. at 376.

The Petitioner further 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* analytical framework. For example, while the Petitioner submitted numerous letters of recommendation from other pilots and colleagues in the field, none of the authors discussed the Petitioner's proposed future endeavor. Instead, the authors primarily focused on the Petitioner's past work experience and accomplishments. Although the record contains statements regarding the Petitioner's lengthy career in the aviation industry, and although the letter writers praise the Petitioner's qualifications and commend his work, we have insufficient information concerning the Petitioner's proposed future endeavor with which to make a determination concerning its substantial merit and national importance. Here, the Petitioner has not identified how much time he will spend working as a pilot as opposed to working as a flight instructor. Again, 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." *Dhanasar* 26 I&N at 889.

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* framework. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility under the second and third prongs. *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 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.

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appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor to work as a pilot and flight instructor will alleviate the pilot shortage and help the national economy by allowing the uninterrupted movement of people, business, and cargo. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

ORDER: The appeal is dismissed.