



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

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

In Re: 28962740

Date: JAN. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks employment-based second preference (EB-2) immigrant classification as 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 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision lacks analysis and discussion of the evidence in the record and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Section 203(b)(2)(B)(i) of the Act. 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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 a degree of expertise significantly above that ordinarily encountered in the field.

Although the Petitioner submitted evidence to establish that he met five (of the six) criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), the Director did not make a determination with respect to whether the

Petitioner qualifies as an individual of exceptional ability.¹ The record contains evidence including his associate's degree in aeronautics from [redacted] dated October 31, 2020, a work experience letter, copies of his licenses, evidence of his membership in the [redacted]

[redacted] information about awards he has received, and four support letters.

On remand, the Director should evaluate the Petitioner's evidence and determine if he has met at least three of the above criteria. If the Petitioner is found to meet at least three criteria, the Director must then conduct a final merits determination and review the evidence in its totality to determine if he has established he possesses a degree of expertise significantly above that ordinarily encountered in his field. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policymanual> (describing the two-step evidential review process used in determinations for exceptional ability petitions).

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for 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 we may, as matter of discretion,² 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.

According to the Petitioner's January 2023 professional plan and statement, his proposed endeavor is to work as a commercial pilot and to continue using his expertise and knowledge in the field of aviation to fill the gap for the well-documented shortage of pilots by training new and current pilots. The Director determined, without any discussion, that the Petitioner's evidence met prong one of the *Dhanasar* analytical framework.

In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889. We indicated 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.

The Petitioner provided a number of articles and industry reports addressing topics such as the economic impact of civil aviation on the U.S. economy, the airline industry's resurgence after the

¹ The Petitioner did not submit evidence to establish that he is an advanced degree professional, as such, to establish his eligibility for EB-2 classification, the Director need not consider this eligibility under the advanced professional standard found at 8 C.F.R. § 204.5(k)(2).

² *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding the U.S. Citizenship and Immigration Service's decision to grant or deny a national interest waiver to be discretionary in nature).

COVID-19 pandemic, and the shortage of pilots. We note, however, that the labor certification process itself is intended to address labor shortages. Further, while such information may help establish the substantial merit of the Petitioner's proposed endeavor, in determining national importance, the relevant question is not the importance of the industry in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Here, the reach of his endeavor appears limited to those passengers and students he may have in the future as a pilot or aviation instructor.

Because the Director's decision did not identify any of the submitted evidence or provide any analysis, it is unclear why it was determined that the Petitioner met prong one. Therefore, we are withdrawing the Director's determination the Petitioner met prong one. Moreover, we note the Director's analysis regarding the remaining two prongs was also inadequate. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, a decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal).

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility for both the underlying classification as an individual of exceptional ability and each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.