



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

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

In Re: 28623345

Date: DEC. 4, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a pilot and aviation administrator, seeks employment-based second preference (EB-2) immigrant classification 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner established he was an advanced degree professional, but had not demonstrated 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish 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 discretion¹, 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.

The Petitioner proposes to work for as a pilot and aviation administrator.

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong of the *Dhanasar* framework, 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. *Dhanasar*, 26 I&N Dec. at 889.

The Director determined that the evidence demonstrated the Petitioner's proposed endeavor has substantial merit and we agree. However, the Director determined that the evidence did not establish that the proposed endeavor has national importance.

On appeal, the Petitioner asserts that he "submitted extensive, probative research and objective evidence, such as letters from experts in the industry and etc." in support of national importance. However, he further asserts that USCIS failed to consider the evidence and give it its correct probative value. In addition, the Petitioner states that he submitted ample evidence to support his claims and lists the evidence provided in response to the Director's request for evidence, including his personal statement, expert opinion letter, industry opinion letter, employment offer letter,² and letters of recommendation.

In his personal statement, we note that the Petitioner emphasized the importance of the aviation industry and the shortage of pilots in the United States.³ When determining national importance, however, the relevant question is not the importance of the industry, sector, or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." *Id.* 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.*

In addition, the Petitioner relies on his training and skills as a pilot to establish the national importance of his proposed endeavor. However, the Petitioner's expertise is considered under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of his proposed work.

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. Although the Petitioner states that he intends to work for [REDACTED] as a pilot and joining several pilot associations, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. 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. Here, we conclude that the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer and

² The Petitioner provided an employment offer letter from [REDACTED] for the position of crew train scheduler I.

³ We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

the passengers on flights he will pilot to impact the aviation industry more broadly at a level commensurate with national importance.

In addition, the Petitioner did not show that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show any benefits to the U.S. regional or national economy resulting from his pilot position would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890.

We also reviewed the Petitioner’s letters of recommendation. The authors praise the Petitioner’s abilities in the aviation industry and the personal attributes that make him an asset to the workplace. While they evidence the high regard the Petitioner’s professional acquaintances have for him and his work, they do not offer persuasive detail concerning the impact of his proposed endeavor or how such impact would extend beyond his employer. As such, the letters are not probative of the Petitioner’s eligibility under the first prong of *Dhanasar*.

Finally, we acknowledge the opinion letter from a professor at the University of [REDACTED]. In the national importance section, the professor primarily discussed statistics on the U.S. pilot shortage and the aviation industry. The advisory opinion does not contain a discussion of the Petitioner’s specific proposed endeavor or its national importance but rather emphasizes the importance of the aviation field. 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). 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.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address his eligibility under the remaining prongs, and we hereby reserve them.⁴ The burden of proof is on the Petitioner to 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 375-376. The Petitioner has not done so here and, therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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).