



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 28945526

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial captain, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or 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 the record did not establish the Petitioner's eligibility under the first and third prongs of the Dhanasar framework. 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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:

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 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.

II. ANALYSIS

The Director determined the Petitioner qualifies for the underlying EB-2 classification. Therefore, the remaining issue is whether the Petitioner has established eligibility for a national interest waiver under the Dhanasar framework. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

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

Initially, we note that much of the Petitioner's evidence, such as the recommendation letters, statements, and training documents and certificates, demonstrate the Petitioner's education, experience, abilities, and skill. The Petitioner's personal and professional qualifications relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar's first prong.

The Petitioner proposes to continue his work as a commercial captain of Airbus A320 aircrafts while also mentoring and transferring knowledge to younger generations who are interested in or are already pursuing careers in the aviation industry. He explained that his proposed endeavor has national implications because "he can provide expert advice, transferring his skills through mentoring colleagues and would-be Captains." He noted that, "as a person of color, [he] also provides an added benefit." In other words, "his presence as an outstanding airman will be an additional motivation and inspiration for a new generation of diverse aviation professionals." The Petitioner identified a list of six benefits his endeavor will impart to the United States, which include:

1. Covid alleviation – he is ready to fly – he can jump into the seat of American, Delta, and Spirit Airlines or any other corporate/military or general aviation company and be immediately of value;
2. Shortage alleviation – persons trained on narrow body (Airbus A320, 319) are in need – he can add value immediately as an expert on Airbus Narrowbodies;
3. Freight cargo – he can join a freight company such as FedEx or DHL and be ready to fly;
4. Passenger pent up demand – he can be ready to fly;
5. Mentor transfer knowledge – he has and continues to do this work; and
6. Inspiration to diverse youth – he has and continues to do this work.

Recommendation letters and the Petitioner's statements demonstrate that the Petitioner mentors junior colleagues and is a member of the [REDACTED]. While we acknowledge this evidence, the Petitioner did not identify how much time he would devote to mentoring

or [redacted] activities, nor has he explained the significance of [redacted] membership in his mentoring work. Even if he had provided this, the Petitioner has not demonstrated how his work in this area would have broader implications in the field.

He asserted that his endeavor will benefit the U.S. economy and national interest through the successful transport of people and goods, the airline industry's economic importance, and the severe shortage of pilots in the United States. The Petitioner emphasized that pilots and the field of aviation are important to the economy and that his proposed endeavor will offer substantial positive economic impacts. In support of his arguments concerning pilot shortages and positive economic impacts, he offered numerous articles about the flight industry, its economic implications, as well as the challenges faced by airlines and pilots.

We conclude that a national shortage of professionals in a particular field does not necessarily establish the national importance of the proposed endeavor, as it does not in itself establish the proposed endeavor's impact. While the articles and reports provide helpful background information and establish the substantial merit of the Petitioner's proposed endeavor, 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 field and also of addressing the nation's shortage of pilots; however, the Petitioner has not sufficiently explained how his work as a pilot would resolve the pilot shortage or produce an impact rising to the level of national importance. Specifically, the Petitioner has not sufficiently analyzed and substantiated how one pilot will improve a national shortage or trigger substantial positive economic impacts.

The Petitioner emphasized that his proposed endeavor creates jobs, increases revenue, and bolsters supply chains. Here, the Petitioner attributes the impact that airports and the aviation industry have upon the economy to his individual proposed endeavor. However, the Petitioner has not demonstrated how these benefits are attributable to his specific endeavor. For example, he has not demonstrated that he has hiring or job creation authority, nor has he presented data to suggest that his individual work as a captain would boost national or even an individual airline's revenue, and he has not shown what cargo he transports or how his individual work would impact the nation's supply chain. Even if this information were provided, the Petitioner would still need to explain how the impact his endeavor creates is on a scale commensurate with national importance. Likewise, the Petitioner stated that he can offer superior safety, security, and customer service as a pilot. We similarly conclude that the Petitioner has not demonstrated how any increases in the aviation industry's safety, security, and customer service would be attributable to his proposed endeavor, nor has he demonstrated this attribution on an individual airline level.

On appeal, the Petitioner provides additional evidence to support the proposed endeavor's impact, including the Petitioner's proposed endeavor goals and motivations, printouts of executive orders designed to advance racial equity, and more details on [redacted]. The Petitioner proposes to continue his work and membership in [redacted], an organization that seeks to: motivate youth; increase the number of underrepresented professionals in aerospace and related careers; advocate for the concerns of its members; and persist in discourse that includes or addresses the lack of underrepresented populations in executive leadership positions and governing boards. The examples of executive orders and federal

policies specifically designed to address persistent poverty, inequality, and the lack of opportunities in conjunction with the statistics on [redacted] size, reach, and geographical breadth establish the national importance of [redacted]. Nonetheless, the Petitioner has not explained how his specific work within [redacted] would rise to the level of national importance. He has not defined his membership role and the evidence does not suggest he was a founding member of [redacted], serves on their board, or otherwise influences the organization. Further, he does not identify how much time he will devote to [redacted] activities. While the Petitioner's teaching, inspiring, knowledge transference, and mentoring may impact the individual students, pilots, employers, or airlines with which the Petitioner works, his individual and cumulative work in these areas do not appear to operate on a scale that rises to the level of national importance. 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. Although the Petitioner's plan to continue his work with [redacted] and in similar activities is commendable and valuable, we conclude that this is not necessarily sufficient to establish the national importance of the proposed endeavor.

On appeal, the Petitioner clarifies how one person can produce a nationally important impact with broad implications in their field, citing *Wickard, Secretary of Agriculture, et al. v. Filburn*, 317 U.S. 111 (1942) in support. The Petitioner explains that *Wickard* demonstrates how one wheat farmer could affect national wheat prices, thereby creating a cumulative impact that negatively affected the entire agricultural industry and the goals of the Department of Agriculture. The Petitioner analogizes this situation to that of a pilot, contending that his endeavor is important because if he incorrectly performs the role, such as by not following Federal Aviation Administration (FAA) rules and regulations, then the whole industry and nation can be harmed. We do not disagree that one person's singular or cumulative activities can have broad implications across a whole industry such that they rise to the level of national importance. However, the Petitioner attempts to demonstrate a positive impact rising to the level of national importance by presenting the important downsides of not performing the job correctly. We conclude that preventing a negative effect is not necessarily sufficient to establish an affirmative positive impact that rises to the level of national importance.

The Petitioner supplies us with additional evidence that includes an advisory opinion from [redacted] [redacted] Director of Aviation Programs at [redacted] documents establishing the Petitioner's ongoing training, as well as salary information. We received this evidence after the deadline for filing this appeal. Although we need not consider this evidence, we nevertheless examined the submission and conclude that it does not overcome the Director's findings or our above analysis.

III. CONCLUSION

The documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar* would 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) (stating that "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.