U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29157198

Date: DEC. 21, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a commercial airline pilot, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category - and thus a related requirement for certifications from the U.S. Department of Labor (DOL) - if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*

The Director of the Nebraska Service Center denied the petition. The Director found the Petitioner eligible for the requested immigrant visa category as a noncitizen of "exceptional ability." *See* section 203(b)(2)(A) of the Act. But the Director concluded that the Petitioner did not demonstrate the merits of his waiver request. On appeal, the Petitioner contends that the Director overlooked evidence and misapplied case law. He asserts that: his proposed endeavor has "national importance;" he is "well-positioned" to advance it; and a waiver would benefit the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not demonstrated the claimed national importance of his proposed work. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term national interest. Thus, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well-positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The Petitioner, a Venezuelan native and citizen, has wanted to be a pilot - like his father - since he was a child. After completing high school, he attended a pilots' school in Venezuela and began earning flight certifications. He has worked as a commercial pilot since 2015, starting as a contract pilot and becoming chief of a corporate aircraft fleet. The Petitioner now holds a U.S. commercial pilot's license and has a job offer from a major U.S. airline. He seeks to work as a commercial airline pilot in the United States.

B. The Requested Immigrant Visa Category

As previously indicated, the Director found the Petitioner eligible for the requested EB-2 category as a noncitizen of exceptional ability. *See* section 203(b)(2)(A) of the Act. This classification requires exceptional ability in the sciences, arts, or business and the potential to substantially benefit "the national economy, cultural or educational interests, or welfare of the United States." *Id.* The term 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).

To demonstrate qualifications for the category, a petitioner must first meet at least three of six evidentiary requirements. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A-F).[1] Then, in a final merits determination, USCIS considers the evidence's quality, evaluating the petition in its entirety. 6 *USCIS Policy Manual* F.(5)(B)(2), www.uscis.gov/policy-manual. The Agency must determine whether a preponderance of the evidence demonstrates a petitioner's possession of a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

The record supports the Director's determination that the Petitioner met at least three of the six evidentiary criteria. But, contrary to USCIS policy, the Director neglected to conduct a detailed final merits determination considering the evidence as a whole. Rather, without further discussion, the Director concluded: "It has been determined that the beneficiary qualifies as an individual of

[1] If those standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence. 8 C.F.R. § 204.5(k)(3)(iii).

exceptional ability." Because the Director's decision regarding the Beneficiary's EB-2 eligibility lacks analysis, we will withdraw it. *See* 8 C.F.R. § 103.3(a)(1) (requiring a USCIS officer to "explain in writing the specific reasons for denial").

To avoid making a final merits determination in the first instance and because we can resolve this appeal on another ground, we will reserve consideration of the Petitioner's eligibility for the requested EB-2 category. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

C. Substantial Merit

A proposed endeavor may have substantial merit whether it "has the potential to create a significant economic impact" or it relates to "research, pure science, and the furtherance of human knowledge." *Matter of Dhanasar*, 26 I&N Dec. at 889. The record shows that the Petitioner's plan to work as a U.S. commercial airline pilot could: improve air travel safety and efficiency; help alleviate a U.S. pilot shortage causing flight cancellations and delays; and aid airlines in remaining solvent and generating revenues for the U.S. economy. We therefore agree with the Director that the Petitioner's proposed endeavor has substantial merit.

D. National Importance

In determining whether a proposed endeavor has national importance, USCIS must focus on the particular venture, specifically on its "potential prospective impact." *Matter of Dhanasar*, 26 I&N Dec. at 889. "An undertaking may have national importance, for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Id.* A nationally important venture may even focus on only one geographic area of the United States. *Id.* at 889-90. "An 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.*

The Director found insufficient evidence that the Petitioner's endeavor would affect large problems such as pilot shortages and financially struggling U.S. airlines "on a national level." The Director stated: "The scope of the impact is too narrow to be in the national interest." The Director found that the Petitioner had not shown that his work would affect more than his employer and its customers.

On appeal, the Petitioner contends that the Director overlooked evidence and arguments. He states that his endeavor "rises to the level of national importance due to the impact it will have in the long-term positive trajectory of air travel safety and efficiency through [his] employment as a commercial airline pilot." He states that he will seek to maintain airline services to rural U.S. cities by volunteering for additional flights so routes can remain open. He also states that his employment will diversify the U.S. aviation industry.

The Petitioner further argues that USCIS overlooked "the interconnectivity of the [airline] field amongst air service providers, airports, and crew." (emphasis in original). The Petitioner states that,

without sufficient pilots, airlines suffer from unreliable flight operations that have "a domino effect" on global flight patterns and flight dispatch coordination. He states that flight disruptions cause massive delays, cancellations, and potentially dangerous flying conditions, diminishing public trust in airline travel and creating revenue losses for airlines and complications for travelers.

The Petitioner states:

> There is no single person that can resolve these disparate and evolving issues, but the presence of a young, qualified, and proficient commercial pilot in the U.S. is a benefit to the country and will help assure consistent and safe airline travel for thousands of civilians and will create an impact that reaches beyond his employer. His impact will contribute to the efficiency of commercial air travel by assuring the availability of a capable pilot that will complete travel routes and deter costly and complicated delays and cancellations.

We recognize that the Petitioner's proposed work as an airline pilot has substantial merit. But, when considering national importance, we must focus on whether the *particular* endeavor has national implications. *See Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner's particular venture involves his employment as an airline pilot. He has not explained how his specific employment, alone, would affect the economy or the airline industry on a national level. He states that he "will *help* assure consistent and safe airline travel." (emphasis added). But the record does not demonstrate that his specific endeavor, by itself, has the potential to assure consistent and safe airline travel nationally. He also has not established that his employment, by itself, could provide enough flight services to maintain routes to U.S. rural cities, or that his hiring, by itself, would substantially diversify the U.S. airline industry.

In *Dhanasar*, we ruled that a meritorious proposal to teach science, technology, engineering, and mathematical courses to university students lacked national importance, finding insufficient evidence that the venture would "more broadly" affect national education. *Id.* at 893. Similarly, the Petitioner has not demonstrated that his meritorious proposal to work as an airline pilot would "more broadly" affect the economy or the airline industry on a national level.

The Petitioner asserts that, in considering the national importance of his endeavor, USCIS violated *Dhanasar*'s framework. He notes that the precedent decision states: "[W]e do not evaluate prospective impact solely in geographic terms. Instead, we look for broader implications." *Matter of Dhanasar*, 26 I&N Dec. at 889. The decision also states: "[W]e seek to avoid overemphasis on the geographical breadth of the endeavor." *Id.* at 890.

The Petitioner, however, cites no example of the Director's use of geographic terms to evaluate his endeavor's prospective impact. The Director found insufficient evidence that the Petitioner's employment would have broad enough implications for the national economy or the U.S. airline industry. But the Director's decision does not find or allege that the endeavor's impact is limited to one geographical area of the country. As the record does not support the Petitioner's assertion, we find it unpersuasive.

The Petitioner has not sufficiently demonstrated that his specific endeavor: would nationally affect the airline industry or the economy, including an economically depressed area; has significant potential to employ U.S. workers; or would broadly enhance societal welfare. We will therefore affirm the petition's denial.

E. The Other Denial Grounds

Our conclusion that the Petitioner has not demonstrated the claimed national importance of his proposed endeavor resolves this appeal. Thus, besides holding back review of his eligibility for the requested EB-2 category, we hereby also reserve consideration of his appellate arguments regarding his positioning to advance his proposed venture and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established that his proposed endeavor has national importance. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.