



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

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

In Re: 28838644

Date: NOV. 9, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an aircraft pilot, seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record does not establish the Petitioner is an individual of exceptional ability. The Director further concluded that the Petitioner 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2) of the Act. For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, “exceptional ability” is defined as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii). Meeting at least three criteria, however, does not, in and of itself, establish eligibility

for this classification.<sup>1</sup> We then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See* 8 C.F.R. § 204.5(k)(2).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

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. 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). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, 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.

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

## II. ANALYSIS

The Director found that the record satisfied at least three of the six exceptional criteria at 8 C.F.R. § 204.5(k)(3)(ii). However, the Director determined that the Petitioner "does not have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business" and, thus, did not establish exceptional ability. *See* 8 C.F.R. § 204.5(k)(2). Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *See* Section 203(b)(2) of the Act; *see also* 8 C.F.R. § 204.5(k); *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"); *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). However, the remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be

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<sup>1</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as a “plan to pursue positions within U.S. airline companies and other organizations that today face a very high demand for pilots.” The Petitioner further stated that he would “help alleviate the industry shortage by offering my training expertise to airlines, companies, training centers, flight schools, among others, within the U.S. aviation market.”

In response to the Director’s request for evidence, the Petitioner reiterated, “I intend to continue using my expertise and knowledge working in the aviation field in the United States as I already am, where I can help fill the many and alarming number of [p]ilot positions in the U.S., as well as train others in the field, whether experienced pilots or new professionals entering the field.”

The Director noted that “the fact that there is a demand for [p]ilots in the United States does not render the proposed endeavor nationally important by default.” The Director concluded that the record does not establish the “proposed endeavor has national importance beyond the significance it would have for his future employer and/or clients.” The Director also determined that “the record does not show the benefits to the U.S. regional or national economy resulting from [the Petitioner’s] activities would reach the level of substantial positive economic effects” contemplated by *Dhanasar*. See *Dhanasar*, 26 I&N Dec. at 889-90. The Director further concluded that the record does not satisfy the second or third *Dhanasar* prongs; however, we note that the record contains directly conflicting statements regarding whether the proposed endeavor would have substantial merit, as a partial requirement of the first prong. See *id.*

On appeal, the Petitioner reiterates that he proposes to work as an aircraft pilot and train other pilots. The Petitioner summarizes his prior work experience and he asserts that his “prior contributions were of national importance in Honduras.” He states that his “endeavor has not changed since leaving Honduras—only his audience.” The Petitioner also references generalized information in the record regarding the aviation industry and he asserts that “the fact that there is a demand for [p]ilots in the United States’ . . . should have been afforded more weight” by the Director.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the “specific endeavor that the [noncitizen] proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

We first note that the Petitioner’s references to his prior work experience and its importance abroad, in the past, are immaterial to determining whether the proposed endeavor may have national importance. An individual’s prior work experience and record of success are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor. See *id.* However, a discussion of the Petitioner’s prior experience and its importance abroad does not address how the specific, prospective endeavor may have national importance in the United States. See *id.*

Next, the record does not establish how a generalized, industry-wide demand for pilots, and the Petitioner's proposal to pilot aircraft and to train others to pilot aircrafts operating generally within the United States' airspace, may have "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. For example, the record does not elaborate on how the Petitioner's piloting—or training of other pilots—would affect the areas of particular flights' departures or arrivals, or any other areas, in order to determine how the endeavor of piloting and training other pilots may have the type of broader implications contemplated by *Dhanasar*. *See id.* Although the Petitioner describes his prior success of piloting in mountainous areas, the record does not establish how the proposed endeavor of piloting and training pilots may have the type of national or global implications within a particular field resulting from certain improved manufacturing processes or medical advances contemplated by *Dhanasar*. *See id.* In turn, although the Petitioner proposes to train others (including those already working as pilots), the record does not establish the number of U.S. jobs the Petitioner's endeavor of piloting and training pilots would create, in order to determine whether the endeavor has "significant potential to employ U.S. workers." *See id.*

As the Director noted, the proposed endeavor of piloting aircraft and training other pilots appears to benefit the Petitioner's existing and potential employers, and the clients or passengers of those companies. However, the record does not establish how the generalized plan to pilot aircraft and train other pilots would have the type of "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and broader implications, such as "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area," contemplated by *Dhanasar*. *Id.* at 889-90.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong, and whether the proposed endeavor has substantial merit, as required by the first *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. As noted above, we also reserve our opinion regarding whether the record establishes the Petitioner is eligible for second-preference classification. *See id.*

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.