U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28566519

Date: NOV. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aviation mechanic, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner had not established that the Petitioner qualified for classification as an individual of exceptional ability and that a discretionary 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.

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. Because this classification requires that the individual's services be sought by a United States employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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:

> (A) An official academic record showing that the [noncitizen] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
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> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does so, we will then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe,* 25 I&N Dec. at 376.

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 eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act.

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

II. ANALYSIS

The Petitioner proposes to work in the United States as an aviation mechanic. The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that they qualified as an individual of exceptional ability. The Director determined that although the Petitioner met at least three out of six criteria—an official academic record showing completion of an aeronautical electronics degree, at least ten years of full-time experience in the occupation, and acquisition of certifications and licenses related to the proposed endeavor—the record lacked evidence that the Petitioner's professional achievements set them apart from other aviation mechanics to show a degree of expertise significantly above that ordinarily encountered in their field as required to establish exceptional ability.

On appeal, the Petitioner argues that the Director's decision had "erroneous conclusions of law and fact." The Petitioner further argues that they have submitted "ample evidence" to demonstrate by a preponderance of the evidence their exceptional ability and that they merit a national interest waiver.

A. Individual of Exceptional Ability

With respect to the underlying EB-2 classification, the Petitioner states that they submitted evidence to meet all six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). We agree with the Director's decision that the Petitioner satisfied at least three of the six required criteria. Because the Petitioner met at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii), we will evaluate the totality of the evidence in the context of a final merits determination below.

On appeal, the Petitioner contends that in finding the Petitioner unqualified for classification as an individual of exceptional ability after a final merits determination, the Director failed to address the record as a whole and rather treated "each piece of the exceptional ability puzzle individually in its analysis." Instead, the Petitioner asserts that the correct question for the Director was "whether, taken as a whole, the record warrants such a finding on a preponderance of the evidence standard" that the Petitioner possesses a degree of expertise significantly above that of ordinary aviation mechanics. In support, the Petitioner argues that the record reflects their "(1) Aeronautical Electronics Degree from an academic institution sanctioned by the Colombian military, (2) nearly two decades of experience as an Aviation Mechanic serving in the Colombian military, (3) a dozen certifications covering several different types of aircrafts, including a license to practice his trade granted by the Federal Aviation Administration (FAA), (4) membership in professional associations in the field such as the International Helicopter Association (HAI), (5) a history of earning an exceptionally high salary relative to his peers, (6) letters of recommendation from his peers in both the public and private sector chronicling [redacted] success in every facet of his career [sic]."

Though we acknowledge the Petitioner's assertions, we conclude nonetheless that the Petitioner did not demonstrate how (1) their degree; (2) work experience; (3) certifications and license; and (4) membership in professional associations sets them apart from other aviation mechanics to show a degree of expertise significantly above that ordinarily encountered in their field. For example, the

Petitioner did not demonstrate how their record compares with aviation mechanics with the same degree, experiences, and certifications, licenses, and memberships.

In regard to work experience, we acknowledge the Petitioner's statement that they were recognized as one of the "most elite class of Colombian Aviation Mechanics" and received the title of "First Technician." However, the Petitioner has not demonstrated the bases upon which those superlatives were awarded. For example, it is unclear whether they were granted due to years of employment and/or service in the Colombian military, or to acknowledge the Petitioner's expertise significantly above that ordinarily encountered in their field. Absent that information, we cannot meaningfully ascertain how those superlatives should factor in our final merits determination.

Nor are the Petitioner's assertions regarding having maintained a high salary relative to their peers sufficient, as the Petitioner did not demonstrate how their salary compares with similarly-situated aviation mechanics.

The Petitioner provides some letters that discussed the Petitioner's education, certifications, and years of service in the Colombian military as an aviation mechanic. While these letters confirm the Petitioner's employment and praise their skills and abilities, they do not demonstrate how the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in their occupation or otherwise signify exceptional ability as an aviation mechanic. Nor has the Petitioner demonstrated that their work has had an impact beyond their employer and their specific duties as an aviation mechanic at a level indicative of achievements and significant contributions to the industry or field.

The record as a whole, including the specific evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability. Although the Petitioner has satisfied at least three of the initial categories of evidence, the record does not demonstrate that the Petitioner has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

B. National Interest Waiver

Since the Petitioner did not demonstrate eligibility for the underlying EB-2 visa classification, we do not need to address the issue of whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. However, in order to provide the Petitioner with a more complete decision we will discuss the matter briefly.

On appeal, the Petitioner points to evidence submitted in support of the petition and in response to the Director's request for evidence (RFE), and maintains that the record demonstrates that their proposed endeavor has national importance. The Petitioner further states that the proposed endeavor will "broadly enhance societal welfare," impact "a matter that a government entity has described as having national importance or is the subject of national initiatives," and that it "has the significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area."

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) 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. Further, the relevant question is not the importance of the field, 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 Dhanasar*, 26 I&N Dec. 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.* 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.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of the Petitioner's work. While the Petitioner's statements reflect their intention to obtain employment as an aviation mechanic, the Petitioner has not offered sufficient information and evidence to demonstrate that the prospective impact of their 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 the Petitioner has not shown that their proposed endeavor stands to sufficiently extend beyond their employer to impact the aviation mechanic field, the aviation industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor they propose to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for the United States. For instance, the Petitioner submitted documentation showing past work experience at [redacted] and that they have secured a position with [redacted] to work as an aviation mechanic. Nevertheless, the Petitioner has not demonstrated how their employment at [redacted] will translate into economic benefits for the United States, nor that their employment stands to have national implications within the field. The Petitioner claims that there is an aviation mechanics shortage with the airline industry, and that aviation mechanics do not appear to be readily available. However, the record does not show that the Petitioner's employment at [redacted] will

[2] *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).

result in a broad impact on the aviation industry or the aviation mechanic field. The first prong's focus is on the proposed endeavor itself and not the petitioner. *Id*. The Petitioner must establish that their specific endeavor—to work as an aviation mechanic—has national importance under *Dhanasar*'s first prong. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to their work, the record does not show that benefits to their employer or regional economy resulting from the Petitioner's service as an aviation mechanic would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the *Dhanasar* framework's first prong.

Because the documentation in the record does not establish the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding their eligibility under the second and third prongs outlined in *Dhanasar*. *See 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"); *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).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that they have not established they are eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.