



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

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

In Re: 28599615

Date: NOV. 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner is an “airline pilot first officer/captain” who 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 determined that despite qualifying for the underlying EB-2 visa classification as an individual holding an advanced degree,¹ the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, applying the three-prong analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director concluded that the Petitioner: (1) did not establish that his endeavor has national importance,² (2) did not demonstrate that he is well-positioned to advance the endeavor, and (3) did not show that on balance, waiving the job offer requirement would benefit the United States. 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 because the Petitioner did not establish that his specific proposed endeavor has national importance and thus, he did not meet the national importance requirement of the first prong of the *Dhanasar* framework. Because the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the two remaining *Dhanasar* prongs. *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).

¹ The record contains degree certificates and corresponding transcripts showing that the Petitioner was awarded a Bachelor of Science degree and a Master of Science degree in May and December 2018, respectively. Both degrees were awarded by the [redacted] Institute of Technology.

² The Director determined that the Petitioner’s endeavor was shown to have substantial merit.

In addressing the issue of national importance, the Director determined that the Petitioner did not provide evidence that his proposed endeavor would have a positive impact on, for instance, the U.S. economy or job market. Although the Director acknowledged the Petitioner's submission of support letters and industry articles about the shortage of pilots in the United States, these submissions were deemed insufficient for the purpose of demonstrating national importance. The Director determined that the support letters did not explain how the Petitioner's proposed endeavor would benefit the United States or broadly impact the aviation field; the Director further noted that labor shortages are addressed by the U.S. Department of Labor through the labor certification process and thus they are not a compelling reason to grant a national interest waiver. The Director also pointed out that in conducting a first-prong analysis of national importance, we focus on the Petitioner's specific endeavor, rather than the importance of the field or profession in which the Petitioner will work. Having considered the Petitioner's endeavor to work as a commercial pilot, the Director determined that the impact of that endeavor would be limited to the Petitioner's employers and would not broadly impact the aviation industry or offer benefits at the national level.

On appeal, the Petitioner argues that the Director "applied a stricter standard of proof" when reviewing the record. We note, however, that except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe*, 25 I&N Dec. at 375 (AAO 2010); *see also Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See generally* 1 USCIS Policy Manual, E.4(B), <https://www.uscis.gov/policy-manual>. While the Petitioner asserts that he has provided evidence sufficient to demonstrate eligibility for the EB-2 classification and a national interest waiver, he does not further explain or identify a specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner further contends that the Director disregarded two expert opinion letters and "ignored the regulation by finding that the evidence submitted does not support [the Petitioner's] statements." The Petitioner did not identify the regulations he claimed the Director ignored, nor did he explain how the contents of the expert opinion letters from [redacted] a professional pilot, or [redacted] an associate professor in aerospace engineering at [redacted] University, support the Petitioner's claim that his endeavor to work as a commercial pilot is of national importance. In fact, the latter opinion discusses the shortage of commercial pilots, underscoring the benefits of civil aviation as well as the substantial merit of the Petitioner's endeavor. [redacted] did not, however, explain how the Petitioner's specific endeavor would address any industry shortages, which, as the Director stated, can best be addressed through the labor certification process. And although [redacted] adequately established the importance of air transportation and its national and global impact, she did not discuss the impact of the Petitioner's specific endeavor. Likewise, [redacted] discussion of civil aviation's positive economic effects does not establish that the Petitioner's endeavor would result in a comparable impact.

[redacted] opinion, despite listing a pilot's responsibilities to illustrate the pilot's "crucial function in the aviation industry," does not explain how the role of a single pilot impacts the aviation industry more broadly; nor did [redacted] discuss the "potential prospective impact" of the Petitioner's endeavor to work as a commercial pilot to establish that the endeavor has "national or even global

implications within a particular field” thus rising to the level of national importance. *Matter of Dhanasar*, 26 I&N Dec. at 889. Rather, [] primarily focused on the importance of global aviation and its impact on trade, tourism, and world economies, but he did not explain how the impact of the Petitioner’s specific endeavor would extend beyond his prospective employers. And while [] claimed that the Petitioner’s endeavor has substantial positive economic effects, he did not support this claim with a discussion of the Petitioner’s specific endeavor; instead, he continued with a broader discussion of aviation’s impact as “the only worldwide transportation network,” highlighting the cumulative impact of “air transportation workers” and the projected growth statistics of pilots, copilots, and flight engineers.

Lastly, the Petitioner assert that his response to a request for evidence included research that supports the national importance of his endeavor. However, as with [] statements, the Petitioner highlights the “pilots’ critical contributions” to the transportation industry and national economy, thus indicating that he broadly considered the cumulative impact of pilots in general rather than focusing on his specific endeavor and explaining how his work as a commercial pilot stands to broadly impact the transportation industry or the national economy. As correctly pointed out in the Director’s decision, a first-prong analysis of national importance focuses on the Petitioner’s specific endeavor, rather than the importance of the field or profession of that endeavor. In the matter at hand, the Petitioner has not established that his proposed endeavor to be a commercial pilot stands to have broader implications on the aviation industry or the United States.

In sum, the Petitioner does not establish that the previously submitted evidence, some of which has been resubmitted on appeal, corroborates the claim that his endeavor rises to the level of national importance.

Accordingly, we adopt and affirm the Director’s analysis and decision regarding the national importance of the Petitioner’s endeavor. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case). As noted above, we reserve the Petitioner’s appellate arguments regarding the two remaining *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.