U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28819338

Date: NOV. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, 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 EB-2 immigrant classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner established his eligibility for the requested EB-2 classification, he did not meet his burden to demonstrate that a discretionary waiver of the job offer requirement 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.

The record supports the Director's conclusion that the Petitioner qualifies for EB-2 classification as an advanced degree professional under section 203(b)(2)(A) of the Act. Therefore, the remaining issue is whether the record establishes that the Petitioner merits a discretionary waiver of the job offer requirement "in the national interest" under 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 USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- 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.

[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).

In applying the *Dhanasar* framework to the facts presented, the Director concluded that the Petitioner established the substantial merit of his proposed endeavor to seek employment as a pilot with a U.S. airline company and demonstrated that he is well-positioned to advance it. However, the Director determined the Petitioner did not establish the national importance of the endeavor by showing its potential prospective impact, such as by providing evidence that it will have substantial positive economic effects, a significant potential to employ U.S. workers, or other broader implications within his field. The Director also determined that the record did not demonstrate that, on balance, it would be beneficial to the United States to waive the job offer requirement.

On appeal, the Petitioner submits a brief in which he generally asserts that the Director applied "novel evidentiary requirements" and a stricter standard of proof than that of preponderance of the evidence. But he does not elaborate on these claims or point to specific instances where the Director applied an incorrect standard or novel requirements. With respect to the first prong of the *Dhanasar* framework, the Petitioner contends the Director "did not give due regard" to the evidence submitted, suggesting that the Director did not properly weigh his previously submitted professional plan and resume, letters of recommendation, and industry reports and articles regarding the aviation industry. The Petitioner's brief emphasizes his qualifications and extensive experience as a pilot, the importance of the aviation industry as a driver of the U.S. economy, and the shortage of qualified pilots amidst increasing demand for air transportation.

We adopt and affirm the Director's decision. *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).

Contrary to the Petitioner's claim on appeal, the record reflects that the Director did not disregard evidence relating to his qualifications and extensive experience as a pilot. Rather, the Director acknowledged this evidence and correctly noted that it relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec. at 890. As noted, the Director determined that the Petitioner met the second prong and is well-positioned to advance the proposed endeavor.

Further, the Director acknowledged and addressed the Petitioner's submission of media and industry reports that emphasize the importance of the aviation industry to the U.S. economy, the critical role of aviation in tourism and trade, and the pilot shortage facing the industry. These articles provide relevant background information and establish the substantial merit of the Petitioner's proposed work in the aviation industry. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific 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.* at 889. 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.

Here, the Petitioner suggested that by filling an open pilot position, he will help to prevent service disruptions, route cancellations, and airline closures that could negatively impact businesses and individuals that rely on air transportation. He further claimed his endeavor would "enhance and improve the aviation industry in the United States," would result in "ripple effects" on trade, tourism, and the U.S. economy, and would address the nationwide shortage of skilled pilots. However, the Director determined, and we agree, that he has not substantiated how one pilot will alleviate a national labor shortage, trigger substantial positive economic benefits, or otherwise have potential prospective impacts at a level commensurate with national importance. While the Petitioner indicates that he may secure employment as a flight instructor, which would allow him to train future pilots, he similarly did not demonstrate how this work would have national implications within the field. 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. 26 I&N Dec. at 893.

For the reasons discussed, the Petitioner's appeal does not sufficiently address or contest the specific evidentiary deficiencies the Director found in applying the *Dhanasar* framework to the facts presented, and therefore does not overcome the Director's well-reasoned grounds for denial of the petition. 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 as a matter of discretion.

ORDER: The appeal is dismissed.