U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28453953

Date: SEP. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot, seeks classification as an individual of exceptional ability in the sciences, arts or business. 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. Section 203(b)(2)(B)(i) of the Act. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's endeavor would have national importance, that he is well-positioned to advance that endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement. 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.

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. 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. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) 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 benefit the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor would have national importance, we examine the specific impact of that proposed endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

In this instance, the Petitioner seeks to work as a commercial pilot in the United States.[1] The Director concluded that while this endeavor has substantial merit, it does not have an impact rising to the level of national importance. On appeal, the Petitioner provides a brief contending that the Director did not properly examine the provided documentation using the preponderance of the evidence standard.

When determining eligibility under the preponderance of the evidence standard, 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. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). While the Petitioner contends that the Director "did not give due regard" to his evidence or employ the correct standard of proof, he provides no examples of information or arguments that were omitted from the denial notice or identify how the Director's standard of proof differed from preponderance of the evidence. Upon review, the Petitioner has not met his burden of proof to overcome the Director's denial and establish that his endeavor is more likely than not to be nationally important. *Id.*; *Matter of Dhanasar*, 26 I&N Dec. at 889-90.

On appeal, as in his underlying petition, the Petitioner emphasizes the shortage of qualified pilots in the United States as evidence that he meets the national importance standard. However, when determining whether a proposed endeavor would have national importance, the relevant question is not the importance of the industry or occupation where the Petitioner will work, but the specific impact of that proposed endeavor. *Id.*; *see generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation."). The Petitioner has not specified how his employment as a pilot, in and of itself, would alleviate a nationwide shortage of such workers. Similarly, while the appellate brief reiterates the petition's claim that the Petitioner will train new pilots in the United States, the record provides no further details about this aspect of the endeavor. The record does not establish how the Petitioner's teaching would impact the U.S. pilot shortage on a level rising to national importance.[2]

The Petitioner also claims that his endeavor will be nationally important due to the importance of the aviation industry to the United States. However, working in an area with substantial merit does not mean that one's endeavor will have national importance. In *Dhanasar*, the petitioner's work as a

[1] The Director concluded that the Petitioner qualifies for the EB-2 classification as an individual of exceptional ability, which the record supports.

[2] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

science teacher was found to have substantial merit but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, while the Petitioner's endeavor in the present case is in an area of substantial merit, he has not established that endeavor's national importance because he has not provided documentation of its prospective impact on the broader field of aviation beyond his prospective employers and customers. *Id.*

While we acknowledge the provided documentation regarding the economic importance of the U.S. aviation industry, the Petitioner has not provided evidence establishing what economic effects would be attributable to his specific endeavor. *Id.* at 889-90. As noted by the Director, the record does not demonstrate how the Petitioner's work as a pilot, in and of itself, would have significant potential to employ U.S. workers or otherwise offer substantial economic benefits to the U.S. or regional economy through business activity or trade. The Petitioner therefore has not established that his endeavor would result in "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* at 890.

Finally, the Petitioner states that his years of experience, skills, and ability as a pilot will make his endeavor nationally important. However, these factors relate to the second *Dhanasar* prong regarding whether the Petitioner is well-positioned to advance his endeavor. They do not relate to that endeavor's prospective impact.

The Petitioner has not provided documentation establishing what impact would be attributable to his endeavor or that this impact would rise to the level of national importance. As such, he does not meet the first prong of the *Dhanasar* test. Because this issue is dispositive of the appeal, we need not address the Petitioner's eligibility under the other two *Dhanasar* prongs and hereby reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 did not otherwise meet their burden of proof).

The Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.