U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28447122

Date: SEP. 28, 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 a member of the professions holding an advanced degree. 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 while the Petitioner qualifies as an EB-2 advanced degree professional, he only meets the second prong of the three-prong analytical framework used to establish eligibility for a national interest waiver. *Matter of Dhanasar*, 26 I&N Dec. 884, 889-90 (AAO 2016). 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 the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Petitioner in this case seeks to work as a commercial pilot and flight instructor. The Director concluded that while this endeavor has substantial merit, the Petitioner did not establish that it would be nationally important. On appeal, the Petitioner provides a brief asserting that the Director used an overly strict standard of proof and did not give "due regard" to the evidence provided.

Upon review of the entire record, we conclude that the Director properly reviewed the provided evidence and analyzed the Petitioner's national importance claims under the first prong of *Dhanasar* using the preponderance of the evidence standard. The Petitioner has not met his burden of proof and provided probative, relevant, and credible evidence establishing the national importance of his endeavor. *Matter of Chawathe*, 26 I&N Dec. at 376.

On appeal, as in the underlying case, the Petitioner relies on the importance of the aviation industry and the shortage of pilots in the United States as evidence of the importance of his endeavor.[1] However, as explained by the Director, the importance of an endeavor is determined not by the industry or occupation it involves, but by what its specific impact will be. *Matter of Dhanasar*, 26 I&N Dec. at 889-890. 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 *Dhanasar*, we found that while the noncitizen's work as a science teacher had substantial merit, it 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. *Id.* at 893. We agree with the Director that in this instance, the Petitioner has not provided sufficient information about his endeavor to establish what its impact on the field of aviation would be.

According to the Petitioner's professional plan, his "proposed endeavor in the United States is to offer [his] expertise . . . to pursue positions within the U.S. aviation industry . . .". However, the purpose of the national interest waiver is not to facilitate a petitioner's U.S. job search. Anyone seeking such a waiver must identify "the specific endeavor" that they propose to undertake. *Id*. at 889. *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."). Here, the Petitioner has not stated a cognizable endeavor, and his claims that his employment as a pilot and flight instructor will have "ripple effects" on the aviation industry and U.S. economy are insufficient to establish how his endeavor's impact will extend beyond his customers and employers to the broader aviation field.

We further agree with the Director that the evidence and arguments regarding the Petitioner's skills as a pilot relate to the second *Dhanasar* prong, which concerns the Petitioner's ability to advance his proposed endeavor. *Id.* at 890. They do not establish what impact that endeavor would have.

[1] 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.

The record does not indicate that the Petitioner's endeavor will have national implications for the field of aviation. It also does not quantify what economic benefits the endeavor will generate, particularly in a depressed area, and so does not show that the endeavor will result in "substantial positive economic effects" as contemplated by *Dhanasar*. *Id.* Therefore, the Petitioner has not established that his endeavor will have national importance.

Because the Petitioner has not met the requisite first prong of the *Dhanasar* test, we need not address his eligibility under the third prong and hereby reserve this issue. *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.