U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28455978

Date: OCT. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director did not make a finding on whether the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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.

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.

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 that they merit a discretionary waiver of the job offer requirement "in the national interest." 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Petitioner claimed eligibility for both types of EB-2 classification, as a member of the professions with an advanced degree and as an individual of exceptional ability. The Director's decision focuses entirely on the issue of the national interest waiver and includes no determination as to whether the Petitioner qualifies for EB-2 classification. Because we nevertheless find that the record does not establish that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest, we reserve our opinion regarding whether the Petitioner satisfies second-preference eligibility criteria. *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"); *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).

Upon de novo review, we adopt and affirm the Director's decision as it relates to the first prong of the *Dhanasar*'s analytical framework with the comments below. *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). Specifically, the Director concluded that the Petitioner's proposed endeavor as a pilot has substantial merit, but not national importance, and that the Petitioner made a material change in his proposed endeavor.

The Petitioner's description of his endeavor in the initial filing lacked specificity and merely expressed his desire to work for any leading commercial U.S. airline. The Petitioner's "Self-Letter" states that "my desire is to pursue a career with the best in Aviation in the United States and contribute from my multidisciplinary experience to become a captain and hopefully to join NASA in the future." The Petitioner also submitted a document titled, "EB-2 Petition for National Interest Waiver Business Plan," but this plan does not make any references to running his own business. Instead, the plan includes information about the air travel industry's outlook and the shortage of pilots in the United States, his professional background as a pilot, and his "Future Plans 2023-2029" that consist of the following five bulleted items:

- Being recruited to a leading commercial airline such as I United, Delta, Fed-Ex etc. as a first officer.
- Advance to the position of captain in a commercial airline.
- Apply to provide my vast experience to the National Aeronautics and Space Administration (NASA).
- I will be looking to provide my knowledge and develop aviation training projects that state of the art in the aviation industry that include Artificial Intelligence, Advance Augmented and Virtual Reality protocols.

- The aviation market both Military and Commercial needs quality training innovations and solutions. Pilots need to be trained professionals and they need to be at their best when thing goes wrong, when the stress is at its peak and when human lives are at stake.

However, in response to the Director's request for evidence (RFE), the Petitioner stated that he is also an "Aerial Technology Specialist" and that he "owns a company [redacted] dealing in high end aerial solutions, which will be his proposed endeavor." The Petitioner submitted a business plan and other documents related to his company located in the Netherlands, such as pricing references for his drone technology ([redacted]) and incorporation documents. The Petitioner then claimed that this endeavor of providing "high end aerial solutions – specialized drones which will be of great benefit to the US military, as well as first response units, and Civil professional corporations" has national importance. The Director found that the information and documentation submitted after the RFE constitute a material change, citing *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

On appeal, the Petitioner asserts that he did not materially change his proposed endeavor because the RFE response letter dated February 21, 2023, described his proposed endeavor as both "commercial airline pilot and/or aerial technology specialist." However, the Petitioner does not dispute that his initial description of the endeavor did not include plans of being an aerial technology specialist or managing his own company. While these activities share a connection through aviation, the emphasis of each endeavor is quite different. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner has not identified a specific and consistent proposed endeavor. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1).

To the extent that the Petitioner's RFE response added the elements of being an aerial technology specialist and managing his business in drone technology and aerial solutions to his proposed endeavor, we agree with the Director that this was a material change. We will therefore not consider the changes made to the Petitioner's proposed endeavor in reply to the Director's RFE.

Now we turn to the Director's conclusion that the Petitioner's endeavor to be employed a pilot in the United States has substantial merit but not national importance. The Director stated that "none of the evidence addressed how the petitioner's individual employment as a pilot would affect the field of commercial piloting broadly" and "none of the evidence demonstrated how the petitioner's employment would have a meaningful or significant effect on the shortage of pilots described by the record." We agree.

On appeal, the Petitioner submits the same recommendation letters, licenses and certificates, resume, and business plan, that are already on record. The Petitioner relies heavily upon his professional qualifications, his work history, and his experience to assert the national importance of the proposed endeavor. However, the Petitioner's expertise relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890.

In *Dhanasar*, we stated that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain

improved manufacturing processes or medical advances." *Id.* Here, the Petitioner has not offered any evidence that his skills differ from or improve upon those already available and in use in the United States. The Petitioner submitted several reference letters attesting to his work experience as a pilot and a captain in the military, but the record does not support that the Petitioner's methodologies or expertise have significantly impacted the field of aviation in a way that rises to national importance.

The Petitioner's claim on national importance of his endeavor also relies on various articles and reports that discuss the value of aviation industry and the lack of pilots compared to the rising demands in air travel. On appeal, the Petitioner offers another article addressing the pilot shortages in the United States. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. We also look to evidence documenting the "potential prospective impact" of the proposed endeavor. *Id.* Here, the record does not contain any supporting evidence that the work of one pilot would have a nationally significant impact in the field of aviation.

The Petitioner acknowledges on appeal that "one single pilot cannot solve the airline shortage" but argues that "a collective of singular pilots will solve the pilot shortage, and that is why there are pilots applying for the national interest waiver." While we recognize that such shortage demonstrates substantial merit of his endeavor, it does not render his proposed endeavor nationally important under the *Dhanasar*'s framework, as it does not in itself establish the proposed endeavor's impact. In fact, the U.S. Department of Labor through the labor certification process directly address such shortages of qualified workers. The issue here is whether the Petitioner has established how his individual employment would affect national aviation employment levels or the U.S. economy more broadly consistent with national importance. However, the Petitioner has not substantiated how his specific work will address a pilot shortage or positively impact the economy.

In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because it will not impact the field more broadly, we find that the record does not establish that his proposed endeavor will sufficiently extend beyond his employment as a pilot and his employer to affect the region or nation more broadly. *Id.* at 893.

For these reasons, we conclude that the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework and thus, the Petitioner has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner's appeal, further analysis of his eligibility under the second and third prongs outlined in *Dhanasar* would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established the national importance of his proposed endeavor. Therefore, the Petitioner has not shown eligibility for the national interest waiver, and we will dismiss the appeal as a matter of discretion.

ORDER: The appeal is dismissed.