U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28087110

Date: SEP. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks classification as a member of the professions holding an advanced degree. *See* 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. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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 although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he had not established that a waiver of the required job offer, and thus of the labor certification, 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.

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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[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).

- 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.

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. *See Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The Petitioner initially stated that he intends to work in the United States as a pilot/airline captain. At the time of filing, the Petitioner was employed by [redacted] a private aircraft charter company operating out of [redacted] Florida, in the positions of pilot, safety director, training manager, ground instructor, and Federal Aviation Administration (FAA) liaison. The record also indicates that he was simultaneously employed as a captain for [redacted] Airlines in [redacted] Utah.

In a personal statement, the Petitioner stated as follows:

> Based on my experience, expertise, and unique abilities, I seek to remain serving this great nation as a Pilot. My experience flying under Federal Regulations Part 91, 121, and 135 will allow me to command any aircraft type in any type of operation to directly help relieve the U.S. from its massive shortage. Further, with my many years of experience, and my high caliber of instruction teaching pilots under Part 61, 135, and 141 of the Federal Regulations, I will help relieve the exponentially growing pilot shortage through mentorship, instruction, and consultation for the next generation of pilots and air carriers.

The Petitioner also submitted copies of his academic credentials, industry articles and reports, a job offer letter, and letters of recommendation in support of his eligibility.

The Director issued a request for evidence (RFE), noting that the record as initially constituted was insufficient to demonstrate that the proposed endeavor had substantial merit or national importance. The Director observed that the Petitioner did not provide specific insight as to what he intends to do in the United States, and requested a detailed description of the proposed endeavor so that the Director could evaluate his request for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted a statement indicating that he began working as a vice president for [redacted] after the petition's filing, and indicated his intent to continue working in this role

in the United States. He also claimed that he would continue working as a captain for [redacted] Airlines.

In an updated personal statement, the Petitioner stated that in his role as vice president for [redacted] he will continue to "provide consultation services, prepare procedural manuals, and act as a liaison between private companies and the FAA to ensure American Aviation companies are complying with FAA regulations" and will "provide technical project development services to the company for their LevelFlight Software." He further stated:

> Perhaps the biggest undertaking that I am embarking for [redacted] is opening a new academy. This will be a new and unique type of aviation school that will directly address multiple shortcomings within the Aviation Industry. When I joined the company, I was able to write the training outline, curriculum, and syllabus for all six courses in two months. I corresponded with the FAA directly, identified the exact legal intricacies for this never attempted project, and we are now looking to gain final certification by the end of this year. One primary objective of this school is addressing the decrease in pilot competency that is plaguing the industry. With the pilot shortage comes a significant drop in the quality of pilots operating today's aircraft. Some airlines are now hiring pilots without interviews and have even attempted to waive the minimum federal flight time required to possess an [airline transport pilot] license. At the flight school, we aim to elevate the quality and skills of the pilots within the nation by placing them in a high stress environment and stripping them of their electronic and software protections with a back-to-basics approach. The purpose of this method is to ensure pilots are equipped with more than the bare minimum knowledge required to fly an aircraft. Instead, we hope to train and graduate expert pilots able to handle extreme and emergency situations for the safety of all passengers.

The Petitioner also submitted opinion letters as well as additional recommendation letters, articles, and research in support of his eligibility for a waiver of the job offer.

In denying the petition, the Director determined that the Petitioner provided insufficient descriptions and documentary evidence to identify his proposed endeavor with specificity, and therefore had not established the proposed endeavor's substantial merit and national importance. The Director noted that in addition to the general descriptions of his proposed duties, the Petitioner provided two different descriptions for his proposed endeavor. The Director noted that he initially stated his intent to work as a pilot/airline captain, but later indicated in the RFE reply that he would open a flight academy at a private aviation company and would be working for that company as its vice president, in addition to maintaining his position as a commercial pilot/airline captain. The Director determined that in addition to materially changing the original proposed endeavor, the Petitioner had not shown, to the extent the endeavor could be understood, that his endeavor had significant potential to employ U.S. workers, offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that he has established, by a preponderance of the evidence, the substantial merit and national importance of his work, and that the Director's decision was in error

because it "applied a stricter standard" of proof. The Petitioner further asserts that the Director erred by not considering the totality of the evidence provided both initially and in response to the RFE.

With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Preliminarily, we note that the Petitioner's proposed endeavor is material to whether the endeavor has substantial merit and is of national importance. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

As noted above, the Petitioner introduced a new proposed endeavor in response to the RFE rather than establishing the national importance of the proposed endeavor described in the initial petition. The Petitioner's new plans in the RFE reply, and contended in this appeal, describe a new set of facts regarding the proposed endeavor. The Petitioner's proposed endeavor to provide consulting services through his role as a vice president of a private aviation company, and his intent to also operate a flight academy on the company's behalf, was presented after the filing date and cannot retroactively establish eligibility. Accordingly, we find that the Petitioner made an impermissible material change to his proposed endeavor.[2] If significant material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See* 8 C.F.R. § 103.2(b)(1). Therefore, on appeal, we will consider if the record demonstrates that proposed endeavor submitted with the initial filing, pilot/airline captain, has national importance. We conclude it does not.

As initially stated, the Petitioner was employed by both a commercial airline and a private aircraft charter company at the time of filing, and proposed to contribute to the aviation industry by continuing to work as a pilot/airline captain. Moreover, in his personal statement submitted in support of the petition, he indicated his intent to also provide mentorship, instruction, and consultation services within the aviation industry. The Petitioner did not provide a timeline for when he would occupy each of these roles and it is not apparent whether securing a position in any of these areas is the proposed endeavor or whether the proposed endeavor involves the Petitioner performing these roles either simultaneously or consecutively. Overall, we have insufficient information concerning the proposed endeavor with which to determine whether it has substantial merit because the Petitioner's proposed

[2] Counsel for the Petitioner argues on appeal that the changes made to the proposed endeavor in response to the RFE did not constitute a material change because pursuant to INA § 204(j),"a Petitioner is able to change employment so long as it is within the same or similar occupation classification." Counsel's argument is misplaced, however, because this employment-based immigrant visa category is not tied to a specific job offer and individuals seeking a national interest waiver of the job offer requirement do not have to request job portability under INA section 204(j).

endeavor has not been clearly defined. We therefore agree with the Director's determination that the Petitioner did not submit persuasive evidence to support a finding of substantial merit. The Petitioner bears the burden to both affirmatively establish eligibility under the *Dhanasar* framework, of which substantial merit is one piece, and establish his eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the 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.* 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.

We agree with the Director that the Petitioner has not provided sufficient documentation or explanation concerning how his proposed endeavor has national importance. The purpose of the national interest waiver is not to afford the Petitioner an opportunity to engage in a job search or further his own career while only adding ancillary benefits to the nation. Although he has many ideas, it remains unclear as to what specifically his proposed endeavor involves aside from securing a job in the U.S. aviation industry as a pilot, a mentor, an instructor, or a consultant. Moreover, we do not know if he intends to perform all the functions he describes or whether he will perform in only one of the identified positions. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *See id.* at 889. While it may include one or more of the positions outlined above, we conclude that the Petitioner has not provided a specific or consistent proposed endeavor activity such that we can determine its national importance.

Throughout the record, the Petitioner points to his background, education, and experience in his field, noting that he has extensive professional experience supported by extensive flight training and certificates and experience working with the FAA. The Petitioner's knowledge, skills, and experience in his field, however, relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under the second consideration of *Dhanasar*'s first prong. To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work.

We note that while the Petitioner, as a pilot/airline captain, may fly nationally or internationally for private or commercial U.S. airlines, simply having a national or global route does not establish that the endeavor has a national or global impact. To the extent that the Petitioner's proposed endeavor can be understood, we conclude that he has not substantiated how his specific work in the aviation industry will address a pilot shortage or positively impact the economy. Specifically, how one pilot will improve a national shortage or will trigger substantial positive economic impacts has not been explained. Assuming the Petitioner simultaneously or alternatively chooses to pursue his initial endeavor to work as a pilot/airline captain and provide mentoring, instruction, and consultation

services within the aviation industry, he has not provided sufficient information of how his work in the aviation field would rise to the level of national importance. While such endeavors may impact the individual passengers he transports, the individuals he trains, or the employers or airlines for which he works, the national importance of this work has not been adequately explained or substantiated. Similarly, 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. *Id.* at 893.

The Petitioner claims that his proposed endeavor has national importance because the United States faces a significant national and potentially global pilot shortage. In addition, the Petitioner asserts that pilots and the field of aviation are extremely important to the economy and that his proposed endeavor will offer substantial positive economic impacts. In support of both his arguments concerning pilot shortages and positive economic impacts, he offered numerous articles about the flight industry, its economic implications, and the challenges faced by airlines and pilots. While these articles provide useful background information, they are of limited value in this matter, as the Petitioner's specific proposed endeavor remains unclear.[3] Furthermore, 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. Here, the Petitioner has not established how his individual employment would affect national aviation employment levels or the U.S. economy more broadly consistent with national importance. It is important to note that the shortage of pilots, as well as aviation instructors, does not render his proposed endeavor nationally important under the *Dhanasar* framework. In fact, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.

The Petitioner further contends that the Director did not duly consider certain pieces of evidence and failed to apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. While we acknowledge the Petitioner's appellate claims, we nevertheless conclude that the documentation in the record does not sufficiently establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* analytical framework.[4] For example, while the Petitioner submitted numerous letters of recommendation from others in the field of aviation, none of the authors discussed the Petitioner's endeavor as initially stated. Instead, the authors primarily focused on the Petitioner's past work experience and accomplishments. Although the record contains statements regarding the Petitioner's lengthy career in the aviation industry, and although the letter writers praise the Petitioner's qualifications and commend his work, we have insufficient information concerning the Petitioner's proposed endeavor with which to make a determination concerning its substantial merit and national importance. Here, the Petitioner has not identified how much time he will spend working as a pilot/airline captain as opposed to providing mentoring, instruction, or consulting services in the aviation field. Again, in determining national importance, the relevant question is not the importance of the industry or profession in which the

[3] We further note that the Petitioner's counsel refers to these reports and articles throughout the record, asserting that the status of the U.S. aviation industry impacts many different industries. On appeal, counsel emphasizes the Petitioner's experience in the field and generally asserts that his proposed endeavor to work as a pilot and vice president for a private aviation company will alleviate the pilot shortage and help the national economy by allowing the uninterrupted movement of people, business, and cargo. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

[4] While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.*

The Petitioner also submitted advisory opinions from a professor in the department of mathematics and computer science at [redacted] University and an associate teaching professor in aerospace engineering at [redacted] University. Both writers focus primarily on the Petitioner's role as vice president for [redacted] where he proposes to provide consulting services, act as FAA liaison, and establishing a flight academy to train pilots. As discussed above, this proposed endeavor, introduced for the first time in response to the RFE, constitutes a material change to the Petitioner's initial proposed endeavor and we will not consider it in our appellate review, as a Petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *see also Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the writers' comments regarding the Petitioner's employment with [redacted] bear little evidentiary weight.

The writers also discuss the Petitioner's qualifications, as well as statistics on the U.S. pilot shortage, aviation safety, and the aviation industry in general. The advisory opinions do not contain a discussion of the initial proposed endeavor or its national importance but rather focus on the Petitioner's new endeavor and the importance of the aviation field. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinions are of little probative value as they do not meaningfully address the details of the proposed endeavor as initially described and why it would have national importance.

Because the Petitioner has not shown that he intends to pursue his initial endeavor and because he has not provided sufficient information and documentation regarding his proposed endeavor, he did not demonstrate that the endeavor has substantial merit and national importance. Therefore, we cannot conclude that he meets the first prong of the *Dhanasar* framework. Since 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 his eligibility under the second and third 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).

III. CONCLUSION

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.