U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28055009

Date: SEP. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft 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 the Petitioner qualified for classification as a member of the professions holding an advanced degree but 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 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 a member of the professions holding an advanced degree 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.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that 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 be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. 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. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, in a business plan submitted in support of his Form I-140, Immigrant Petition for Alien Workers, the Petitioner described his endeavor as a plan to "facilitate jet owners and operators to outsource the administration of their privately-owned jet or fleets of aircraft to [the Petitioner's company]." More specifically, the business plan states that the Petitioner's company, "[o]perating from [redacted] Florida, . . . allows clients to outsource the day-to-day intricacies of coordinating jet maintenance and repair, arranging hangar rentals, scheduling trips, and managing crew, among other tasks," such as "offering professional pilot services," "services related to purchasing aviation insurance," "negotiating bulk fuel contracts from suppliers," and "transport logistics services."

However, the business plan contains material information that is inconsistent with information provided on the Form I-140 regarding the Petitioner's proposed employment. A petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Specifically, on the Form I-140, Part 6. Basic Information About the Proposed Employment, the Petitioner asserted that the job title for his full-time position would be "Professional Pilot" and he stated that his annual wages would be $50,000. Furthermore, the Petitioner provided the following nontechnical job description for his proposed employment: "[P]ilot and navigate the flight of fixed-wing aircraft on nonscheduled air carrier routes, or helicopters. Requires Commercial Pilot certificate. Includes charter pilots with similar certification, and air ambulance and air tour pilots. Excludes regional, national, and international airline pilots." However, the business plan states, "Once an EB-2 visa is approved for [the Petitioner], he will occupy the position of General Manager"—not professional pilot as indicated on the Form I-140—and that his annual wages would be $72,000 in the first year, increasing to $81,037 in the fifth year, not $50,000 as reported on the Form I-140. The Petitioner's nontechnical job description for his proposed employment provided on the Form I-140 omits any reference to duties similar to those of a company's general manager, whether on a full-time or part-time basis.

Moreover, the business plan also states that the Petitioner's company would employ a pilot (one of six total workers, including the Petitioner as the general manager and two independent contractors) in the first year whose wages would be "based on 11 months' salary at $41,600 annual rate," not $50,000. The business plan further states that the company would hire a second pilot (for a total of seven workers, including the Petitioner as general manager) in the third year, with the pilots' annual wages increasing from $44,133 in the third year to $46,821 in the fifth year, still below the annual wages of $50,000 for such a position indicated on the Form I-140. The record does not reconcile the numerous material inconsistencies between the business plan's information about the Petitioner's job title, annual wages, and the wages of pilots in general at his company and such information provided on the Form I-140; therefore, the business plan bears minimal probative value, and the reliability and sufficiency of other evidence in the record is similarly reduced. *See id.*

In response to the Director's notice of intent to deny (NOID), the Petitioner submitted a personal statement, in which, in relevant part, he reiterated that his proposed endeavor is a plan "to continue providing my aviation services to[] all the companies I've established relationships with, including [redacted] and continue to thrive and become one of the most professional pilots in the world." We note that, in contrast to the business plan submitted at the time of filing the Form I-140, the Petitioner's personal statement submitted in response to the NOID does not address working on a full-time basis as a general manager, or hiring and supervising other pilots whom his company would employ, further reducing the probative value of the business plan. *See id.*

The Director acknowledged that "the record establishes that the proposed endeavor has substantial merit." However, the Director observed that "high demand for individuals like him in the United States . . . does not, by itself, establish that his work stands to impact the broader field or otherwise have implications rising to the level of national importance." The Director further found that "the Petitioner has not demonstrated that the specific endeavor . . . has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects." Therefore, the Director concluded that the record "has not established that the proposed endeavor is of national importance." The Director further concluded that the record does not satisfy the second and third *Dhanasar* prongs. *See Dhanasar*, 26 I&N Dec. at 888-91.

On appeal, the Petitioner quotes his statement submitted in response to the Director's NOID and he summarizes his prior academic, employment, and training history. He also states that various publications in the record regarding the general aviation industry "demonstrated objectively that [the Petitioner's] role as a Pilot has national importance by highlighting the critical contributions that pilots make to the transportation industry and national economy."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The Petitioner's references on appeal to his prior academic, employment, and training history in the context of the first *Dhanasar* prong is misplaced. Although an individual's prior academic, employment, and training history are material to the second *Dhanasar* prong—whether an individual is well positioned to advance a proposed endeavor—they are immaterial to the first *Dhanasar* prong—whether a proposed endeavor has both substantial merit and national importance. *See id.* at 888-91. Because the Petitioner's prior academic, employment, and training history are immaterial to whether his proposed endeavor may have national importance, we need not address them further. *See id.*

In turn, the Petitioner's references on appeal to the various publications in the record regarding whether his proposed endeavor may have national importance is misplaced. As noted, in determining national importance, we focus on the "specific endeavor that the [noncitizen] proposes to undertake," rather than generalizations about the importance of an industry, field, or profession. *Id.* at 889. None of the publications in the record referenced by the Petitioner on appeal—with titles such as "The Global Airline Industry Contributes to Economic Development" and "Employment in the U.S. Aviation Industry – Statistics & Facts"—address the Petitioner, his proposed endeavor, or how it may have "national or even global implications within a particular field" or otherwise have broader implications, such as "significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the publications do not address the Petitioner or his specific endeavor, they do not establish how the Petitioner's specific endeavor may have national importance. *See id.*

Based on the Petitioner's description of his proposed endeavor in the record, and setting aside material inconsistencies addressed above, his endeavor appears to benefit the specific clients or other entities and individuals who may use his services. However, the record does not establish how the proposed endeavor of "providing [the Petitioner's] aviation services" will have broader implications beyond his clients or other entities and individuals who may use his services, "such as those resulting from certain improved manufacturing processes or medical advances." *See id.* In turn, the record does not establish how employing a total of seven workers—including the Petitioner and two independent contractors—in [redacted] Florida, demonstrates "significant potential to employ U.S. workers or . . . other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90. Because the record does not establish potential broader implications or substantial positive economic effects of the proposed endeavor, it does not establish that the proposed endeavor may have national importance. *See id.*

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong; therefore, he is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *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 the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.