U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 28088430

Date: SEP. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial airline pilot, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability. *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, while the Petitioner's proposed endeavor has substantial merit, the record did not establish that the Petitioner qualifies for a national interest waiver 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.

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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id.* While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates that:

- 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.[4]

As to the Petitioner's qualifications under the EB-2 classification, the Director determined that the Petitioner satisfied eligibility criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), and (E). The Director reviewed evidence submitted relating to eligibility criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (F); the Director described why that evidence did not establish that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought, as well as why the evidence did not show that he has been recognized for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations. The Director explained that letters submitted did not meet regulatory requirements.[5] The letters from his previous employers did not specify whether the Petitioner worked full-time or part-time during claimed periods of employment, nor did they include descriptions of his job duties. The Director also pointed out inconsistencies in the record concerning the Petitioner's claimed dates of employment that were not resolved in response to a request for evidence.[6] The Director further explained that letters from the Petitioner's colleagues, while laudatory of his professional knowledge and work ethic, did not provide insight as to how the Petitioner's work accomplishments constitute achievements or contributions to the industry or field. The Director also noted that the letters of support were not corroborated by independent, objective evidence to substantiate their content or otherwise demonstrate that the Petitioner has been recognized for any significant contributions to the industry or field by peers, government entities, or professional or business or organizations. The Director provided a detailed final merits analysis of the evidence submitted—including the Petitioner's licenses, certifications, and memberships—and determined that the Petitioner does not have a degree of expertise significantly above that ordinarily encountered in his profession. The Director concluded that the Petitioner does not qualify for the EB-2 classification as an individual of exceptional ability.

The Director also considered the Petitioner's qualifications under the three prongs of the *Dhanasar* framework. The Director explained how specific evidence within the record—such as the letters of

[3] *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).
[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[5] *See* 8 C.F.R. § 204.5(g)(1).
[6] *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that a petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies, and that doubt cast on any aspect of a petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence).

support, the Petitioner's professional plan, and industry reports—did not establish that the Petitioner's proposed endeavor to continue his work as a commercial pilot has national importance; that he is well positioned to advance the endeavor; or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification.

On appeal, the Petitioner submits a brief in which he asserts that USCIS "erroneously denied" the petition and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not identify any unusual requirements imposed, nor does the Petitioner specify how the Director erred or what factors in the decision were erroneous.[7] The Petitioner also contends, without further explanation, that the Director applied a stricter standard of proof than that of preponderance of the evidence[8] and "did not give due regard" to the evidence submitted. The Petitioner's brief emphasizes his qualifications as a pilot and the importance of addressing pilot shortages,[9] as well as reiterates economic impact claims concerning his proposed endeavor that are not substantiated by probative evidence within the record. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. On appeal, the Petitioner has not provided arguments or evidence which overcome the Director's determination.

We adopt and affirm the Director's decision. *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).

**ORDER:** The appeal is dismissed.

[7] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[8] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

[9] Although not specifically addressed in the Director's decision, we note that the Petitioner has not provided an explanation of how his employment as a single pilot would impact pilot shortages in the airline industry.