U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24443910

Date: MAR. 23, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 the record did not establish the Petitioner's eligibility for the underlying EB-2 classification nor his eligibility under the Dhanasar framework. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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, 889 (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:

- 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 determined the Petitioner had not established he has at least five years of progressive post-baccalaureate experience as a pilot; however, we withdraw that finding. The Petitioner offered sufficient evidence to establish that he has the equivalent of an advanced degree. The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the Dhanasar framework.

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual 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. Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we 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.

In support of his petition, the Petitioner submitted numerous articles on the shortage of airline pilots, industry reports on aviation, a national interest waiver eligibility advisory opinion, recommendation letters, and his professional plan and statement, among other pieces of evidence. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

On his Form I-140, the Petitioner described his work as navigating the flight of a fixed-wing aircraft or helicopters on non-scheduled carrier routes. He stated in his initial professional plan and statement that he would "work[ ] as a Commercial Pilot for airlines in the U.S. . . . to help curtail the shortage of pilots in the U.S." In response to the Director's request for evidence (RFE) and notice of intent to deny (NOID), the Petitioner emphasized that in 2020, he established [redacted] a Florida-based limited liability company (LLC). He explained that:

> Since its founding, I act as the Chief Executive Officer, Chief Pilot, and Director of Operations. In addition, to acting as a pilot, I will be able to contract pilots to fulfill different flights. I plan to expand my business through the purchase of aircrafts, with the aim of helping the aviation market, while transporting passengers around the world. Through my company, I will generate direct and indirect jobs including publicist, pilots, flight attendant, mechanics, dispatchers, ground transportation, in addition to others.

[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).

Here, the Petitioner changed his proposed endeavor from working as a pilot for U.S. airlines to entrepreneurship and sourcing other pilots for contracted flights. Although the Petitioner may still serve as a pilot in his new proposed endeavor, he appears to focus on numerous activities outside of piloting aircraft for U.S. airlines. A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The Petitioner formed his new business after filing the initial petition in 2018. 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). If the Petitioner would like USCIS to consider his new endeavor as the owner and operator of [redacted] he must file a new petition. Our decision will focus on the proposed endeavor as initially stated.

As a pilot, the Petitioner stated that he can "make contributions of major significance to airlines here in the U.S." He explained, the endeavor will "substantially benefit the U.S. economy and national interest, considering the airline industry's national importance and the severe shortage of pilots in the U.S." He further explained that his endeavor will potentially impact the United States by enhancing the U.S. aviation market, addressing an acute national shortage of pilots, and helping the U.S. economy, as multiple industries are commercially suffering due to pilot shortages. The Petitioner further claimed his endeavor will create broad implications due to the ripple effects of his activities. He explained verbatim that:

> [H]is work will benefit the airlines; the governments, corporations, and individuals that require the cargo he carries on his flights; and will have numerous ripple effects for other businesses and industries throughout the [United States] and globally due to the increase of demand and air travel on a global scale. The successful transportation of cargo in the form of goods within the [United States] results in economic benefits such as the generation of more revenue, and ultimately increase the flow of money in the [United States] at the national level, thus contributing to the U.S. gross domestic product.

The articles and reports evidence the shortage of airline pilots; however, a national shortage of professionals in a particular field does not necessarily establish the national importance of the proposed endeavor, as it does not in itself establish the proposed endeavor's impact. While the articles and reports provide helpful background information and establish the substantial merit of the Petitioner's proposed endeavor, we nevertheless conclude that none of the reference materials discuss the Petitioner's specific proposed endeavor. As the Director explained, 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." See Dhanasar, 26 I&N Dec. at 889. We acknowledge the importance of the aviation field and also of addressing the nation's shortage of pilots; however, the Petitioner has not sufficiently explained how his work as a pilot for U.S. airline companies would resolve the pilot shortage or produce an impact rising to the level of national importance. The record also contains evidence that

the Petitioner served in the military and received accolades and certificates of appreciation for his work. Such evidence demonstrates the Petitioner's distinguished service, honor, and merit, but it does not support a finding of impact to the field of aviation.

We reviewed the Petitioner's recommendation letters and note the high opinion the authors have of the Petitioner's personal and professional qualities. While the authors describe the Petitioner's experience, skill, and past accomplishments, none of the letters mention the proposed endeavor or explain why it has national importance. The authors describe the Petitioner's achievements, but do not demonstrate how these achievements impacted the field. Rather, the examples provided suggest the Petitioner had a successful career, which benefitted the Venezuelan military and other employers, but not the aviation field overall.

Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Here, the letters do not support the Petitioner's eligibility under the first Dhanasar prong, as they do not discuss the proposed endeavor or explain why it has national importance, nor do they describe the Petitioner's specific impact to the field.

The Petitioner submitted an advisory opinion from [redacted], a professor in the department of aviation at [redacted] University, concerning the Petitioner's eligibility for a national interest waiver. In the national importance section of [redacted] opinion, he primarily discussed statistics on the U.S. pilot shortage, the aviation industry, as well as the robust and high-quality nature of the Latin American aviation industry. The advisory opinion does not contain a discussion of the proposed endeavor or its national importance but rather emphasizes the importance of the aviation field. Furthermore, [redacted] repeated much of the information the Petitioner already provided in his résumé without adding sufficient independent analysis. 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 opinion is of little probative value as it does not meaningfully address the details of the proposed endeavor and why it would have national importance.

On appeal, the Petitioner contends the Director did not apply the correct standard of proof when reviewing the evidence. In support, he relies primarily upon the evidence and arguments previously submitted. While the Petitioner's services as a pilot will benefit his employer and the passengers he transports, the evidence does not support a finding that the Petitioner will meaningfully diminish the airline pilot shortage as a result of his proposed endeavor. The Petitioner repeatedly emphasizes the importance of and shortages in the field, rather than the importance of the proposed endeavor. As we explained, merely working in an important field is insufficient to establish the national importance of the proposed endeavor.

In addition, 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. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar's* first prong.

We conclude that the Petitioner has not offered sufficient evidence to corroborate his claims that the proposed endeavor has national importance. Even considering the claimed ripple effects, it is not apparent that the Petitioner's proposed endeavor activities would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's services would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Dhanasar, 26 I&N Dec. at 890.

The evidence does not establish the national importance of the proposed endeavor as required by the first prong of the Dhanasar precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar would serve no meaningful purpose.

III. CONCLUSION

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).

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. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.