



**U.S. Citizenship
and Immigration
Services**

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

In Re: 26399878

Date: Apr. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner had not established 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. § 103.3.¹

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;

¹ The Director erroneously informed the Petitioner that he had no appeal rights. See 8 C.F.R. § 103.3(a)(1)(ii); *AAO Practice Manual*, Ch. 1.4(a), <https://www.uscis.gov/aao-practice-manual>; and <https://www.uscis.gov/archive/appeals-of-denied-petitions-under-the-jurisdiction-of-the-administrative-appeals-office-aao-by>. Because the Petitioner filed a timely appeal, the Director made a harmless error and has no negative impact in the adjudication of this appeal.

² 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 individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Director concluded the Petitioner qualifies for second preference immigrant classification as an individual of exceptional ability. Accordingly, the remaining issue to be determined on appeal is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

. . . I intend to continue working as a commercial/private Aircraft Pilot, Captain/Commander, and extend my trainings and skills to also develop my career and become a trainer and examiner capable to support new pilots and/or the professional development of my peers.

In that sense, I plan to perform this using my long experience in the airline industry, which have allowed me to achieve expressive results, hold important positions, help in the preparation of several new pilots for their career in major airlines, and support the development of my peers, throughout the world, especially in America. I also intend to help the airline industry in the United States to fulfill its pilots' shortage by sharing my experience with new professionals and allowing them to develop crucial tasks in airline companies.

Through my vast experience in the aviation field, I plan on sharing my abilities with the new professionals in the American market, in order to help them to advance in their career. I am well qualified to evaluate the performance of my peers, specially [sic] the pilots who will fly as my First Officers. My experience as an [sic] Captain is critical for the preparation of new pilots. Also, an experienced pilot plays an essential role in the evaluation of professionals for an airline. Therefore, with the use of these skills, combined with my flight experience that now exceeds 10,000 hours, I expect to help with the development of major airlines in the American market and help them to find the professional that fits their needs.

Also, I firmly believe that my continued presence in the United States will allow me to quickly further advance in my field of endeavor, as the United States has the largest aviation market in the world. I have vast experience as a commercial pilot who has worked for the most significant fleet in the market. My extensive experience combined with the skills I have acquired by all the specialization that I made, places me as an unique professional with the stature to provide essential services in qualifying other pilots. Because of this background, I will serve the American aviation market not only as a pilot, but also, in a near future, as a professional that can work with airline companies to future development of new training and examination systems.

In response to the Director's request for evidence, the Petitioner claimed:

. . . I intend to work as a Commercial and Airline Pilot, flying planes, as First Officer or Captain, to transport passengers and cargo, contributing not only to the aviation industry, but to several industries that need the aviation to continue growing and developing, such as tourism, business, and logistics. Furthermore, I plan to become Instructor and Examiner, so I will train, qualify, and prepare new pilots, consequently helping the demand and shortage for new pilots that plagues the U.S. aviation industry.

It is important to emphasize how important the aviation industry is to the United States of America. Air transport is a major contributor to global economic prosperity. Aviation provides the only rapid worldwide transportation network, which makes it essential for global business and tourism in addition to playing a vital role in facilitating economic growth, in every country

. . . .

. . . I expect to use my skills as a pilot to continue my work in the aviation field, providing services for Airlines in America, a country that has the major airlines in the world. My work as a pilot is essential to any business in the industry once without pilots, airlines cannot operate. Through my work as an Airline Pilot, I will contribute to the development and maintenance of the national logistics industry, transporting people and goods over scheduled or non-scheduled flights. Also, I intend to become an instructor and examiner, to support the development of the aviation industry by training new pilots and supporting the development of my peers.

. . . .

. . . I intend to continue working as an Aircraft Pilot, who will not only support companies in the field but also the whole industry to sustain its supremacy in the world. I plan to perform this job using my long experience in the airline industry, as a Commercial Aviation or Airline pilot. It is important to highlight that not all pilots can work as Commercial and Airline Pilots, like I can. Only a small number of pilots are qualified enough to work as airline pilots, which requires years of experience and at least 1,500 hours of flight. In this sense, my main objective, if granted residency in the US, is to help the aviation market, which urgently needs qualified pilots to act. The absence of qualified professionals has already generated major consequences, such as the cancellation of flights, and as has been shown, the absence of flights harms several related markets, especially the logistics of people and cargo, and tourism.

The Director determined the Petitioner demonstrated the proposed endeavor's substantial merit but not its national importance. On appeal, the Petitioner maintains:

. . . [H]is plans are robust and beneficial, and among many duties, it is included to work as an Airline Pilot, flying planes, as First Officer or Captain, to transport passengers

and cargo, contributing not only to the aviation industry, but to several industries that depends on the aviation to continue growing and developing. His work will also support the social development of the nation when transporting people along the country and internationally. Furthermore, [the Petitioner] also intends to become licensed as a Flight and Type Rating Instructor and Examiner, training, qualifying, and preparing his peers and new pilots, consequently helping the development of the aviation industry, including the fight against the current pilot's shortage.

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 specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of *his* services as a pilot or instructor rather than the national importance of pilots, the aviation industry, or the wide range of business fields or industries impacted by aviation. 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.* 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.

In addition, while the Petitioner stresses his "trainings and skills," "long experience," "vast experience," and "extensive experience," the Petitioner's experience and abilities in his field 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 *Dhanasar*'s first prong.

Moreover, 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. Here, the Petitioner did not demonstrate that the prospective impact of continuing his work as a pilot or instructor rises to the level of national importance. 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 record does not show how his individual pilot or teaching services stand to sufficiently extend beyond his potential or futuristic employers or students, to impact the industry or the U.S. economy more broadly at a level commensurate with national importance.

Further, the Petitioner highlights the shortage of pilots in the U.S. workforce and contends that "[i]t is important to remember that Aviation, as Science, is part of the STEM [Science, Technology, Engineering, or Mathematics] professions," and the Federal Aviation Administration "is tracking the growing aviation employee shortage by ensuring a consistent pipeline of skilled Aerospace professional into the workforce, thereby securing a robust U.S. aviation industry in the future." With respect to the first prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.³ Many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit

³ See generally 6 *USCIS Policy Manual* F.5(D)(2), <https://uscis.gov/policymanual>.

in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance.⁴ On the other hand, while proposed classroom teaching activities in STEM, for example, may have substantial merit in relation to U.S. educational interests, such activities, by themselves, generally are not indicative of an impact in the field of STEM education more broadly, and therefore generally would not establish their national importance.⁵ Thus, simply pursuing an endeavor in a STEM field does not automatically demonstrate eligibility for a national interest waiver. In this case, the Petitioner does not intend to advance STEM technologies and research. Rather, Petitioner seeks employment as a pilot or aviation instructor. 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.

Finally, the Petitioner did not establish that his proposed endeavor has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without relevant evidence regarding any projected U.S. economic impact or job creation attributable to his specific services as a pilot or aviation instructor, the record does not show any 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*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, 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*, therefore, would serve no meaningful purpose.⁶

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁴ *Id.*

⁵ *Id.*

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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).