



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

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

In Re: 31459131

Date: JUL. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot and flight instructor, seeks second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.¹ 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.

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

¹ We note the Petitioner indicates on appeal that neither he, nor counsel, received a copy of the Director’s decision. However, U.S. Citizenship and Immigration Services (USCIS) records indicate that a copy of the decision was properly mailed to each, and neither was returned as “undeliverable.”

interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,² 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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id.

II. ANALYSIS

The Director determined 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 waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner indicated that his proposed endeavor is to “train U.S. pilots at the [redacted], Florida] branch of [I-A-S- LLC³].” He stated that “[b]ecause of the crucial role that pilots play in the U.S. economy, and because of the critical challenges facing airlines in hiring enough pilots, [his] proposed endeavor to train pilots in the United States addresses a key national interest of substantial merit.” The Petitioner submitted numerous news articles discussing the airline industry and the expected global pilot shortage. In response to the Director’s request for evidence (RFE), the Petitioner clarified that he “proposes to teach the highest level flight instruction courses offered by [I-A-S- LLC].” He indicated that he “will offer particular expertise in inclement weather and dangerous condition training, based on his exceptional career and track record in such situations.” The Petitioner submitted⁴ a letter from D-K-, Chief Executive Officer of I-A-S- LLC, stating that the Petitioner’s proposed employment “will offer impactful benefits to the largest U.S. airlines by enabling the sizable expansion of training opportunities that can bring pilots to the highest levels of qualification in the industry. This is important for improving the smooth functioning of the aviation industry, which has ripple effects for the economy of the United States.” He submitted a letter from R-U-, an industry professional, discussing the airline industry and pilot shortages, and detailing the specialized knowledge and skills required to train the high-level courses. He also submitted a letter from Captain Z-, a former inspector for the [redacted] describing the Petitioner’s high-level experience, along with numerous articles outlining the current and expected pilot shortages in the United States and elsewhere.

As stated above, the first *Dhanasar* prong looks to the proposed endeavor and requires that the Petitioner demonstrate that it has both substantial merit and national importance. *See id.* at 889. Regarding substantial merit, the endeavor’s merits may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining

² *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver is discretionary in nature).

³ We use initials to protect the privacy of individuals.

⁴ This is a non-exhaustive list of evidence the Petitioner submitted in the record. While we may not discuss every document submitted, we have reviewed and considered each one.

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. 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.*

The Director determined that the Petitioner established the proposed endeavor’s substantial merit but not its national importance. On appeal, the Petitioner reiterates that he “intends to work as [a] flight instructor at [I-A-S- LLC] in [redacted], Florida.” He indicates that the record includes highly detailed statements from experts “with relevant knowledge of the proposed endeavor and the specifics of [his] ability to advance the proposed endeavor . . . and extensive independent news articles, government policy documents and regulations, and other evidence that demonstrates the critical role that pilots play in the functional operation of the U.S. economy.” The Petitioner concludes that “the independent evidence of America’s strong need for pilot trainers, the enormous impact of having insufficient pilots on the U.S. economy, and the industry projections of a growing deficit of available pilots demonstrates that [his] proposed endeavor would be of particular value to the aviation industry and U.S. economy more broadly.” The Petitioner submits⁵ an updated Personal Plan describing “how [his] credentials meet specific needs of the national interest.” He then provides a new expert opinion letter from W-C-, Professor Emeritus and Program Coordinator Air Traffic Management from [redacted] [redacted] in [redacted] Florida, evaluating “the national interest implications of solving the ongoing pilot shortage in the United States” and a new National Impact Study for the proposed endeavor with a “detailed analysis and statistical argument for the impact of skilled flight instructors on alleviating the pilot shortage and the downstream impacts of this proposed endeavor.”

Upon de novo review, we conclude that the Director properly reviewed the provided evidence and analyzed the Petitioner’s national importance claims under the first prong of *Dhanasar* using the preponderance of the evidence standard. Further, we agree with the Director that the Petitioner’s endeavor has substantial merit but does not satisfy the national importance element of *Dhanasar*’s first prong. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

On appeal, as in the underlying case, the Petitioner relies on the importance of the aviation industry and the shortage of pilots in the United States as evidence of the national importance of his endeavor. However, we are not persuaded by this claim that his proposed endeavor has national importance due to the shortage of professionals in his field. A shortage of qualified professionals alone does not render the work of an individual flight instructor nationally important under the *Dhanasar* precedent decision. See *id.* (looking to the “potential prospective impact” and “broader implications” of the proposed endeavor). Here, the Petitioner has not established that his proposed endeavor stands to impact or significantly reduce the claimed national shortage. Moreover, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process.⁶ The

⁵ Again, while we may not discuss every document submitted on appeal, we have reviewed and considered each one.

⁶ Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. See *Matter of Dhanasar*, 26 I&N Dec. at 885; see also 20 C.F.R. § 656.1.

Petitioner has not shown how his specific proposed endeavor, as an individual flight instructor, has national implications within his particular field. Rather, it appears that he will be working at an individual flight school that will exclusively benefit from all of his efforts within his field and his proposed endeavor involves only the 80 individual pilots he will train per year.

The Petitioner has not otherwise provided sufficient evidence documenting the “potential prospective impact” of his work. *See id.* While the Petitioner’s proposed high-level flight instruction has substantial merit, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor 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. Here, we conclude the record does not show that the Petitioner’s high-level flight instruction stands to sufficiently extend beyond his future individual students attending his specific flight school to impact the field of piloting more broadly at a level commensurate with national importance. The Petitioner’s claims that his employment as a flight instructor will have downstream impacts on the aviation industry and U.S. economy are insufficient to establish how his proposed endeavor’s impact will extend beyond his students and employer to the broader aviation field.

The record does not indicate that the Petitioner’s endeavor will have national implications for the field of aviation. It also does not quantify what economic benefits the endeavor will generate, and so does not show that the endeavor will result in “substantial positive economic effects” as contemplated by *Dhanasar*. *Id.* Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

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. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the second and third prongs outlined in *Dhanasar*. *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.