U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37391994

Date: APR. 01, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a robotic research scientist who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that they had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for an NIW, 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.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that the beneficiary merits 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 the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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

- 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.

Id.

II. ANALYSIS

The Petitioner earned a Master of Science in Mechanical Engineering from [redacted] and the Director determined the Petitioner qualifies as a member of the professions holding an advanced degree. The proposed endeavor is to continue researching safe artificial intelligence algorithms for robotic planning and control in areas such as autonomous driving, warehouse automation and autonomous aviation. On appeal, the issue to be determined is whether the petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

We conclude that a remand is warranted in this case because the Director's decision is insufficient for review. As the Petitioner asserts on appeal, the Director did not address or thoroughly analyze the complete submission of documents, particularly those submitted in response to the request for evidence (RFE).

The Director issued a RFE requesting additional evidence to support the national importance prong, specifically information on the potential to employ U.S. workers. In the RFE the Director also requested documentation to show the Petitioner is well positioned to advance the endeavor and that it would be beneficial to the United States to waive the requirements of a job offer.

In response, the Petitioner submitted his original research citations, descriptions of the Petitioner's publications, a peer review record, and a detailed description of the proposed endeavor, among other documents. The Director issued a concise denial that reiterated the deficiencies noted in the RFE but did not discuss the Petitioner's additional materials submitted in response to the RFE, which leads us to find the record inadequate for review.

An officer must fully explain the reasons for denying the application in order to allow the petitioner a fair opportunity to contest the decision and to afford us an opportunity for meaningful appellate review. *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 435 (9th Cir. 2021) (citing *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021). If evidence is highly relevant, the adjudicating body must at least acknowledge that evidence, either implicitly or explicitly, in its decision.

In particular, the decision before us lacks review of the documents submitted in response to the RFE. In *Dhanasar*, we concluded that the first prong, substantial merit and national importance, focused on the specific endeavor the petitioner proposed to undertake and said that "we look for broader implications." *See Dhanasar*, 26 I&N Dec. at 889. Broader implications are not necessarily evaluated from a narrow frame of reference such as geography; implications within a field which demonstrate a national or even international influence of broader scale can rise to a level of national importance. Additionally, many proposed endeavors that aim to advance STEM technologies and research, whether in academic or industry settings, not only have substantial merit in relation to U.S. science and technology interests, but also have sufficiently broad potential implications to demonstrate national importance. *See generally* 6 *USCIS Policy Manual*, F.5(D)(2), https://www.uscis.gov/policy-manual. In analyzing national importance, the Director primarily focused on the economic impact of the Petitioner's proposed endeavor, and failed to discuss the RFE submissions or consider the broader implications as required in the *Dhanasar* analysis.

Similarly, the Director's conclusory review of the second and third prongs in *Dhanasar* lacks a thorough examination of the initial evidence and the documentation submitted in response to the RFE such that the Petitioner has a meaningful opportunity to contest the decision. While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver of the job offer requirement, the Director did not adequately address the evidence and arguments submitted with the initial filing and in response to the RFE. Nor did the Director discuss the most relevant factors set forth in Dhanasar, and therefore did not sufficiently explain the reasons for the denial.

Because we are unable to conclude the Director adequately explained the reasons for the denial, we will withdraw the decision and remand this matter for further consideration and entry of a new determination. On remand, the Director should review the entire record, including the Petitioner's response to the RFE and appeal, and determine whether he has established eligibility for the national interest waiver outlined in the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.