U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30626816

Date: APR. 04, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that 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 pursuant to 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 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of*

Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petition to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner proposed to continue their research on transportation safety, transportation mobility, and urban transportation planning to identify and analyze transportation safety and traffic congestion factors to improve transportation systems, primarily with emphasis on the shipping industry.

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, focuses on the specific endeavor that 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 their decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit. Based upon the Petitioner's statement and other supporting documentation, we conclude that the proposed endeavor is of substantial merit.

For the second part of their decision regarding the first prong of the *Dhanasar* framework, the Director concluded that the Petitioner did not demonstrate that their proposed endeavor is of national importance. However, the Director's analysis of national importance relied upon elements from the third prong of the framework, in which we determine whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. For example, immediately after concluding that the proposed endeavor does not national importance, the Director stated that the Petitioner had not established that "it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification," and went on to list several third prong factors from the precedent decision.

Later in the decision, under the bulleted heading "National importance," the Director initially (and correctly) explained that the focus of a national importance analysis under the *Dhanasar* framework is the specific proposed endeavor, not the field or industry in which a petitioner proposes to work. However, they then went on to conduct an analysis of whether the Petitioner was well positioned to advance their proposed endeavor, which falls under the second prong of the framework.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994)(finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director did not explain the reasons behind their conclusion that the Petitioner's proposed endeavor is not of national importance.

In addition, we note that when issuing their RFE, the Director stated that the evidence of the Petitioner's education and experience was sufficient to establish that the Petitioner was well positioned to advance their endeavor, and thus met the second prong of the *Dhanasar* framework. However, the Director then reached the opposite conclusion in their decision.

On remand, the Director should evaluate the record, including the materials provided with the appeal, and provide a clear and coherent analysis of the Petitioner's eligibility for a national interest waiver per the *Dhanasar* analytical framework and related USCIS policy guidance.

III. CONCLUSION

For the foregoing reasons, the matter will be remanded to the Director to determine whether the Petitioner has established: (1) the national importance of the Petitioner's proposed endeavor as required by the first prong of the *Dhanasar* precedent decision; (2) that the Petitioner is well positioned to advance the proposed endeavor under the second prong and; (3) on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification for the Petitioner. The Director may request any additional evidence considered pertinent to rendering a decision under the foregoing analysis, and we express no opinion regarding the ultimate resolution of this case on remand.

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