U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33037087

Date: AUG. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a craft beer brewer, 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 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 that the record did not establish that the proposed endeavor is of national importance, that the Petitioner is well positioned to advance the endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that 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 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.

Id.

II. ADVANCED DEGREE

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification. Here, the Director found that the Petitioner qualified as an advanced degree professional.

As the identified reasons below are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the EB-2 visa classification. *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").

On remand, the Director should analyze the record and determine whether the Petitioner has established he is an advanced degree professional consistent with the regulations at 8 C.F.R. § 204.5(k).

III. NATIONAL INTEREST WAIVER

The Petitioner is a craft beer brewer. In the brief submitted with the initial petition, the Petitioner states that his proposed endeavor is to provide his "expertise as an Entrepreneur and Business Executive to bring his…[redacted] craft beer brand and business operations to the United States."

The Director determined that the Petitioner did not establish that his proposed endeavor has national importance, that he is well-positioned to advance his proposed endeavor, or that on balance, waiving the job offer requirement would benefit the United States. On appeal, the Petitioner asserts that the Director made several errors in this matter.

Upon review, we agree with the Petitioner that the Director's decision regarding the national interest waiver contained sufficient errors to warrant a remand. We are remanding the case to the Director for further review and to provide an accurate and sufficient explanation of the grounds of denial so that the Petitioner can more fully understand the Director's concerns.

[1] *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).

The organization of the decision makes it unclear which *Dhanasar* prong is being discussed at any one time, such that we cannot meaningfully review the decision. For example, in the beginning of the national interest waiver analysis, the decision discusses the balancing test, then pivots to a discussion of the proposed endeavor in *Dhanasar*, followed by a paragraph regarding job offers, and then one on the preponderance standard, all without analysis of the Petitioner's eligibility. In the latter part of the decision, there is a header indicating discussion of the third prong of *Dhanasar*, but it is followed by analysis wherein the first prong and the third prong are discussed together. A decision must fully explain the reasons for denying a visa petition 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)(1)(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).

On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility for both the underlying classification and each of the three prongs of the *Dhanasar* framework. The Director should review the record and determine if the Petitioner's endeavor to bring his "[redacted] craft beer brand and business operations to the United States" will impact the field on a level commensurate with national importance. *See Dhanasar*, 26 I&N Dec. at 889. 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.