U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33398380

Date: AUGUST 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineer, 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but 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 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.

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. 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 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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third

- 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

In his Proposed Endeavor document, the Petitioner states he will create a company, [redacted] which will specialize in architectural design, construction, and consulting services for renovations and new residential and commercial real estate ventures. The Petitioner states the company will be headquartered in [redacted] and operate in the southeast region of Florida. The Petitioner submitted a business plan for [redacted] which explains the company will address the housing crisis in the United States by providing high-quality housing options that will contribute to the increased availability of residential units.

The Director found the Petitioner is an advanced degree professional who is well positioned to advance his proposed endeavor. We agree. The Director determined the Petitioner did not establish the national importance of his proposed endeavor or that waiving the job offer requirement would benefit the United States.

On appeal, the Petitioner asserts the Director made numerous factual errors and referenced evidence he did not submit, which deprived him of a fair opportunity to contest the decision. The record supports the Petitioner's claims. The Director stated the Petitioner "intends to work as an Entrepreneur in the mining/mineral sector," but the relevant evidence shows that the Petitioner is a civil engineer whose proposed endeavor is the establishment of the [redacted] construction company. The Director also stated that according to the Petitioner's letter and personal statement, "the petitioner will expand and direct business activities of [redacted] a company in mining/mineral sector in Florida," and refers to [redacted] as the Petitioner's company throughout the denial decision. However, the Petitioner's letters, personal statement and business plan all discuss the Petitioner's intent to create [redacted] a construction company.

The Director also referenced an "invitation from Brazil-Texas Chamber of Commerce for the petitioner to join as Mining Committee," evidence of "several projects that [were] initiated and currently underway by [redacted] under the petitioner's direction as its CEO," and letters that discuss "the petitioner's contributions to [redacted] Specifically, the Director addressed letters from L-O-N-W[2] and R-D-J- that the Director stated were submitted in response to the request for evidence (RFE). De novo review shows the record contains no such evidence. To the contrary, the record addresses the Petitioner's proposed work for [redacted] and contains letters from W-V-, E-A-, and E-T- which were submitted in response to the RFE.

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in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[2] We use initials to protect the privacy of the referenced individuals.

These factual errors show the Director's decision was based on evidence not in the record of these proceedings. When denying a petition, an officer shall explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). An officer must fully explain the reasons for denial to allow the petitioner a fair opportunity to contest the decision and our opportunity for meaningful appellate review. *Cf. 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). Here, the Director's errors deprived the Petitioner of a fair opportunity to appeal the denial and inhibit our ability to meaningfully review the denial on appeal. Consequently, we will remand the matter to the Director to assess whether the Petitioner is eligible for and merits a national interest waiver based on the record of proceedings in this case.

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