U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31658531

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a mechanical engineer who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 the record did not establish that the Petitioner qualified for the underlying visa classification, nor did he merit a discretionary waiver of the job offer requirement 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 dismiss the appeal.

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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of exceptional ability individuals. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. 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 USCIS may, as matter of discretion, 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.

USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts of Appeals, as well as the Third Circuit in an unpublished decision).

II. ANALYSIS

We note multiple reasons why the Petitioner's appeal cannot receive a favorable determination. Not only did he offer conflicting information in the initial filing relating to the proposed endeavor, he then made a material change to what the proposed endeavor would do in his response to the Director's request for evidence (RFE).

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner was not eligible for the EB-2 classification as an individual of exceptional ability. We agree with the issue the Petitioner raises in the appeal regarding the Director's decision. That issue relates to the final merits determination and the fact that the Director was supposed to consider all of the evidence together, but based on the Director's abbreviated analysis, it is not apparent that they complied with this mandate. But because of other dispositive factors, we will not address the EB-2 arguments further within this decision.

B. National Interest Waiver

The Petitioner is an engineer who earned his foreign mechanical engineering degree in 2015. He also has a background in project management.

The first prong, substantial merit and national importance, 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 the initial filing statement, the Petitioner stated:

> I would create a company that will offer project management consultancy with particular attention on the information technology (IT) and Blockchain field to companies across the U.S. and also contribute to the development and high performance by hiring professionals to work side by side with out [sic] customer and project needs. Promoting relentless and continuous improvements, providing highly qualified technical/commercial consultancy to our clients on the new global projects developed and based on IT and Blockchain technology. Additionally developing tools, courses, and platforms that make it possible to fully take advantage of the social benefits represented by the decentralization of information management of these new technological tools. All these aspects certainly will boost and contribute to adding products to the U.S. economy.

That did not appear to align with the business plan he offered with the initial filing that placed a heavy focus on the "Decentralized Medical Info (DEMI) project," which uses Blockchain technology to give users more control over their medical records. The plan further provided:

> DEMI is a decentralized platform that enables secure, fast and transparent exchange and usage of medical data, such as EHR (Electronics Health Records). We would use Blockchain technology to create a user focused EHR and maintain a single true version of the user's data. DEMI will enable users to give conditional access to different healthcare agents such as doctors, hospitals, laboratories, pharmacists, and insurers to interact as they see fit.

The business plan also stated it "will provide onsite or remote services and resourcing for leading business and government organizations, helping them to achieve their strategic goals." The Director issued an RFE noting the Petitioner's statements and how those differed with the material within the business plan. The Director indicated it was necessary for the Petitioner to submit corroborating evidence and to clarify exactly what the proposed endeavor would entail, effectively requesting clarification on the proposed endeavor's substantive nature.

Responding to the RFE, the Petitioner submitted a statement that failed to address the Director's concerns about the conflicting information. Instead, he detailed several points relating to the proposed endeavor and he offered a revised business plan that stated "[the proposed endeavor] will provide extensive IT project management and scrum master consultancy, corporate IT team training services and high-level IT training services. It will target small- and medium-sized enterprises (SMEs), corporations and individuals in the U.S." We note the revised business plan only made one passing reference to the healthcare market and how it could represent a stable revenue stream.

Within the denial, the Director noted the discordant claims and evidence but also briefly evaluated the Petitioner's eligibility under *Dhanasar's* first prong. Based on our de novo review of the record, we conclude the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong. Specifically, we conclude that the Petitioner has submitted insufficient and inconsistent evidence regarding the substantive nature of his proposed endeavor.

The primary—but not only—basis for dismissing the appeal is the Petitioner offered conflicting and relevant information in the initial filing, failed to address that contradictory material in his RFE response, and provided an amended business plan in that same response that altered what the proposed endeavor would do and who it would serve. This resulted in unresolved inconsistencies in the record in addition to a material change.

A petitioner must establish eligibility at the time he files the visa petition. 8 C.F.R. § 103.2(b)(1), (12). Further, he may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). USCIS may not approve a visa petition if a petitioner was not qualified at the priority date but expects to become eligible at a subsequent time. *See id.* at 175–76 (citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971)). The Petitioner did not explain the discordant information when comparing his statements and the business plan in the initial filing, nor did he address why he made amendments to the business plan in between the initial filing and the RFE response. That conflicting information, and those amendments, were so material and considerable that we will not decide which version of each that we should evaluate.

Regarding the inconsistency element between the Petitioner's initial statement and business plan, then between the initial business plan and the second one offered in the RFE response, these irregularities create a significant disharmony. The Petitioner must resolve this incongruity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). But as we noted above, the Petitioner made no effort to explain the discrepancy when the Director raised the issue in the RFE, nor does he address it now on appeal even after the denial decision discussed the inconsistencies. This has a natural tendency to impair the evidence's quality and reliability and undermine the Petitioner's claims. When we evaluate the evidence in the record, we determine what is true not by the quantity of evidence alone but by its quality. *See Chawathe*, 25 I&N at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79–80 (Comm'r 1989)). The Petitioner has not demonstrated his statements or evidence in the form of the business plans are of sufficient quality to satisfy the preponderance of the evidence standard.

As the secondary basis for dismissing the appeal, because the Petitioner has offered conflicting information and evidence relating to what the proposed endeavor will consist of, he has not demonstrated its substantive nature. In other words, the statements and the evidence the Petitioner has offered call into question what work he would actually perform through the endeavor if the NIW petition were approved. This encumbers USCIS' ability to make an informed eligibility determination. *See Love Korean Church v. Chertoff*, 549 F.3d 749, 754 (9th Cir. 2008) (quoting *Ho*, 19 I&N Dec. at 591–92 noting that: (1) filing parties have a duty to resolve the inconsistencies by independent objective evidence; (2) attempts to explain or reconcile the conflicting accounts by itself without competent objective evidence pointing to where the truth, in fact, lies, will not suffice; and (3) doubt cast on any aspect of submitted evidence may lead to the agency concluding other evidence is not adequately reliable or sufficient to support the petition); *see also Doe v. McAleenan*, 929 F.3d 478, 486–87 (7th Cir. 2019).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.