U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34683914

Date: DEC. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree, but that he had not established 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. 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. Section 203(b)(2)(B)(i) of the Act. 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.

While 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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.

II. ANALYSIS

The Petitioner proposes to work in the United States as a researcher. The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. The remaining 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.

A. The Proposed Endeavor's Substantial Merit and National Importance

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

In denying the petition, the Director determined that the Petitioner's proposed endeavor has substantial merit and that he is well-positioned to advance it. The Director determined, however, that the Petitioner did not establish the proposed endeavor's national importance, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director "abused their discretion by failing to properly analyze evidence under the preponderance of the evidence standard, within the NIW framework."

The Petitioner states that he currently holds an assistant teaching professor position at [redacted] His proposed endeavor involves applying "advanced financial econometrics and modeling techniques to analyze financial market instability, the banking sector's vulnerability, and the financial aspects of happiness among U.S. residents in order to address real-world challenges within the U.S. financial markets and market intermediaries." According to his resume, the Petitioner holds three degrees from the [redacted] a doctoral degree in economics, a master's degree in statistics, and a master's degree in economics. The Petitioner also states that he has a Ph.D. in economic sciences, a master's degree in finance and banking, and a bachelor's degree in economics from the [redacted] in Serbia. The Petitioner explains that his assistant professor position at the [redacted] will enable him to continue his research in financial market volatility, U.S. banking industry stability, and the relationship between financial inclusion, resiliency, and the happiness of U.S. citizens using high-frequency datasets.

In support of his petition, the Petitioner submitted his curriculum vitae, academic records, personal statement, and industry reports and articles. In addition, the Petitioner submitted recommendation letters from academics familiar with the Petitioner's work and independent advisory opinions, as well as evidence of his peer-reviewed journals and publications along with related citations.

In evaluating *Dhanasar's* first prong, the Director concluded that while the Petitioner demonstrated the proposed endeavor's substantial merit, he failed to establish its national importance. In the request for additional evidence, the Director stated that the Petitioner intends to work as an assistant professor

in the field of mathematical modeling and that the Petitioner "failed to provide specific insight as to what the beneficiary intends to work on as an Assistant Professor in the field of mathematical modeling." The Director also noted that the record lacked sufficient information regarding the number of individuals the Petitioner's business plans to hire, train, or support, and that there was no evidence showing that that the wages for current or prospective employees would have substantial positive economic effects, such as generating revenue or creating jobs. In denying the petition, the Director found that the Petitioner's proposed endeavor as an economist in the field of financial econometrics was not nationally important. The Director reiterated that the Petitioner did not provide sufficient information regarding the number of individuals his business plans to hire, train, and support, and that his business would offer wages that would have substantial positive economic effects. The Director also concluded that the Petitioner failed to demonstrate that his business "stands to impact the regional or national population at a level consistent with having national importance."

On appeal, the Petitioner argues that the Director misstated the proposed endeavor and failed to properly analyze the endeavor. We agree. The Director mischaracterized the proposed endeavor, and thus neither meaningfully nor correctly analyzed its national importance. 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. *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).

On remand, the Director should provide a full and complete analysis of the Petitioner's specific proposed endeavor and determine whether it is of national importance. If the Director concludes that the Petitioner's specific proposed endeavor does not meet the substantial merit or national importance requirements of *Dhanasar*'s first prong, the decision should adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

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.

In the decision denying the petition, the Director concluded that the Petitioner was well positioned to advance the proposed endeavor. On remand, the Director should review and evaluate the record to determine whether the Petitioner is indeed well positioned to advance his specific proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

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 petitioner 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.

The Director concluded that the Petitioner has not shown that "he presents a significant benefit to the United States through his proposed endeavor as an [e]conomist," and 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. On remand, the Director should reevaluate the Petitioner's claims and evidence under the third prong of the *Dhanasar* framework, considering the revised analysis of the first two prongs as discussed above.

III. CONCLUSION

For the reasons outlined above, we are withdrawing the Director's decision and remanding the matter so that the Director may determine whether the Petitioner has established eligibility for a national interest waiver as a matter of discretion. The Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if 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. The Director may request any additional evidence considered pertinent to the new determination and we express no opinion regarding this matter's ultimate disposition.

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