U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34868647

Date: DEC. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an auditor, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional as well as a national interest waiver of the job offer requirement attached to this classification. 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 did not establish eligibility for a national interest waiver. 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

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:

- 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.

[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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

II. ANALYSIS

The Director determined that the Petitioner qualified for classification as an advanced degree professional and that the proposed endeavor has substantial merit. However, the Director concluded that the Petitioner did not establish that the proposed endeavor has national importance, that she is well-positioned to advance her proposed endeavor, or that waiving the job offer requirement would benefit the United States.

A. Substantial Merit and National Importance

The first Dhanasar prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake and its "potential prospective impact." Id. at 889. 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. Id. The term "endeavor" is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation. For example, while engineering is an occupation, the explanation of the proposed endeavor should describe the specific projects and goals, or the areas of engineering in which the person will work, rather than simply listing the duties and responsibilities of an engineer. See generally 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual.

Although the Director concluded that the Petitioner did not establish that the proposed endeavor is of national importance, the Director did not apply any factors to the Petitioner's evidence or explain why the evidence was insufficient to establish eligibility under this prong. Specifically, the Director stated that "the petitioner submitted multiple articles, studies, and reports for the national importance prong. The articles, studies, and reports provided the latest trends regarding the field of Accounting and its national importance in the United States." The Director immediately followed this with a conclusion, "[h]owever, the submitted evidence does not demonstrate that the beneficiary's proposed endeavor has national importance as there is no significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area. Accordingly, the petitioner's proposed work does not meet the national importance part of the first prong of the Dhanasar framework." Here, the Director did not adequately explain how the evidence in the record led to the determination that the Petitioner did not establish that the proposed endeavor is of national importance. However, the Director must explain in writing the specific reasons for the decision. C.F.R. § 103.3(a)(l)(i).[2] The Director should also analyze the evidence and conclude whether the Petitioner's endeavor has national importance. As noted above, Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id. at 889-90.

[2] 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).

B. Whether the Petitioner Is Well-Positioned to Advance the Proposed Endeavor

In addressing this prong of the framework under Matter of Dhanasar, the Director noted that the Petitioner submitted a letter of interest from an employer, peer-reviewed articles, and "evidence that she reveiwed manuscripts for various journals." The Director concluded that the letter of interest lacked detail "indicating that the beneficiary is well positioned to advance the proposed endeavor by accepting the job offers;" the articles did not "demonstrate that other researchers have followed, adopted, and implemented her work;" and "the petitioner does not explain how reviewing manuscripts for various journals demonstrates she is well positioned to advance her proposed endeavor." However, as noted by the Petitioner on appeal, the Director did not address a large portion of the submitted evidence, including an expert opinion and letters of support "attesting that the petitioner is well-positioned to advance the propsed endeavor." On remand, the Director should address all the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

C. Whether, on Balance, Waiving the Job Offer Requirement Would Benefit the United States

As to the third prong of Dhanasar, the Director concluded that "the record does not demonstrate the widespread benefits associated with the beneficiary's working as an Auditor in the field of accounting. In addition, the record does not demonstrate that the beneficiary's proposed endeavor may lead to the creation of jobs. The record does not contain sufficient evidence to demonstrate that the beneficiary's proposed endeavor would be beneficial to the Unted States. Also, the petitioner fails to submit evidence that their knowledge or skills are not easily articulated in a labor certification." However, the Director did not discuss the evidence that was considered in balancing these considerations nor address the Petitioner's specific claims as to the third prong. In addition, "[e]vidence that the endeavor has the potential to create a significant economic impact may be favorable but is not required, as an endeavor's merit may be established without immediate or quantifiable economic impact. For example, endeavors related to research, pure science, and the furtherance of human knowledge may qualify, whether or not the potential accomplishments in those fields are likely to translate into economic benefits for the United States." Matter of Dhanasar at 889.

III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand the matter for further consideration. On remand, the Director should review and fully analyze the entire record in considering whether the Petitioner has established eligibility under the Dhanasar framework. If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

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