U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34834854

Date: DEC. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an automotive manager and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or individual of exceptional ability, as well as a discretionary 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 that the evidence did not establish that the Petitioner qualifies for the underlying EB-2 classification, and the record did not show he warrants a national interest waiver because he did not satisfy any of the requisite three prongs as set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). This matter is before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner must establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). On appeal, he reasserts that he qualifies for the EB-2 classification based on exceptional ability and he has met all three *Dhanasar* prongs, and resubmits related documents. He also avers that the denial lacks proper analyses and he was deprived of a fair opportunity to address the evidentiary deficiencies as to his classification eligibility and the claimed national importance of his proposed endeavor. 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.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1). If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant 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. at 889, provides the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See, e.g.*, *Brasil v. DHS*, 28 F.4th 1189 (11th Cir. 2022) (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

The Petitioner explicitly sought EB-2 classification based on exceptional ability, which requires him to first satisfy at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and then demonstrate, under a final merits evaluation, that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2) (defining "exceptional ability"); 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (discussing a two-part framework for determining exceptional ability). The Petitioner provided below detailed assertions and specific documentary evidence for his request for the EB-2 classification based on exceptional ability as well as voluminous documents in support of his claim that he also warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs.

Although he did not seek the underlying EB-2 classification as an advanced degree professional, the Director nonetheless issued a request for evidence (RFE) requesting, among other things, additional evidence that the Petitioner is a member of the professions holding an advanced degree.[2] In response to the RFE, the Petitioner submitted additional documents and again reiterated that he is seeking to classify himself as an individual of exceptional ability and that he warrants a national interest waiver.

The Director ultimately denied the petition, concluding that the Petitioner's evidence did not establish that he qualifies for the underlying EB-2 classification and the record did not show that he warrants a national interest waiver under the *Dhanasar* framework. But it is unclear whether the Director denied the Petitioner's request for the EB-2 classification as an advanced degree professional or an individual of exceptional ability. Other than conclusively stating that "[t]he educational and exceptional ability qualifications for the classification has not been met" (and merely referencing statements from the counsel's brief below), the Director did not provide any relevant analysis or findings related to the Petitioner's eligibility for the EB-2 classification as he requested and as required under the regulations.

As for the national interest waiver, the Director's denial did not provide a sufficient analysis and related findings as required under *Dhanasar*'s three-prong framework. The Director concluded that the "proposed endeavor has substantial merit, but not national importance," but did not otherwise properly address the proposed endeavor or provide any findings or analysis as to why it does not have national importance under the standard set forth in *Dhanasar*, 26 I&N Dec. at 889.[3] The Director's denial further appears to conflate *Dhanasar*'s first prong analysis with its third prong factors and final balancing test, while only selectively discussing relevant evidence in the record in a limited manner.

The Director's decision thus does not reflect a reasoned consideration of the Petitioner's claims and related documents he presented below for us to conduct a meaningful appellate review, as it did not sufficiently address his assertions and evidence pertinent to his classification eligibility and the claimed national importance of his proposed endeavor. 8 C.F.R. § 103.3(a)(1)(i) (stating that when denying a benefit, the Director *shall* explain the specific reasons for denial); *see also Matter of A-P-*, 22 I&N Dec. 468, 474, 478 (BIA 1999) (holding that a decision should reflect "the substantive completeness of the decision" and *must* accurately summarize the relevant facts, reflect analysis of the applicable statutes, regulations, and legal procedures, and clearly set forth legal conclusions); *Matter of M-P-*, 20 I&N Dec. 786, 787-78 (BIA 1994) (holding that the reasons for a denial must be clear to allow the affected party a meaningful opportunity to challenge the decision on appeal).

[2] In the RFE, the Director also twice refers to the Petitioner as an "industrial engineer."

[3] The Director instead referenced in part language from *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998), which is not applicable here as this previous precedent decision was vacated by *Dhanasar*.

We will therefore withdraw the Director's decision and remand the matter for a new decision for further consideration and the entry of a new decision. On remand, the Director should review the entire record, including the appeal documents, and determine whether the Petitioner has established his eligibility for the underlying EB-2 classification based on exceptional ability, and whether, in the Director's discretion, he warrants a national interest waiver under the *Dhanasar* framework. We express no opinion as to the outcome of this matter.

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