U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37008883

Date: FEB. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 that the Petitioner qualified for the EB-2 classification as an individual of exceptional ability, 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.* [If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. *Id.*]

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:

(A) An official academic record showing that the [noncitizen] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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.

Because the EB-2 visa 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.

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 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.

[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).

II. ANALYSIS

The Petitioner proposes to establish and operate, [redacted] a marine fuel management and bunker inspection services company. The Director found that the Petitioner qualifies as an individual of exceptional ability. For the reasons discussed below, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

A. Eligibility for the EB-2 Classification

With respect to the underlying EB-2 classification, the Petitioner does not claim eligibility for the classification as a member of the professions holding an advanced degree. Instead, he claims to be eligible as an individual of exceptional ability in the sciences, arts, or business. With respect to the underlying EB-2 classification, the Director found that the Petitioner met at least three of the six categories listed above without conducting sufficient analyses. The Director also concluded that they have "examined the entire record" and "determined that the self-petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. Where a petitioner meets initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows the petitioner possesses exceptional ability. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

In our de novo review of the Petitioner's eligibility for the underlying classification, we will withdraw the portion of the Director's decision finding that the Petitioner has established that he is an individual of exceptional ability. We conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision lacks meaningful analysis of the six criteria and the evidence and instead reaches conclusory findings. Similarly, the Director's decision lacks full and complete final merits analyses of the totality of the record to determine whether the Petitioner has established that he is recognized as having a degree of expertise significantly above that ordinarily encountered in his field.

B. National Interest Waiver

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.

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.

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.

In denying the petition, the Director determined that the Petitioner's proposed endeavor has substantial merit, but concluded that the Petitioner did not establish the proposed endeavor's national importance. The Director, however, did not offer an analysis on the second and third prongs. On appeal, the Petitioner argues that the Director overlooked precedent decisions and failed to properly examine the entirety of evidence submitted. The Petitioner further contends that the decision "did not provide any reasonable explanation" to deny the second and third prongs.

We agree. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). A decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *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). Here, the Director's decision did not contain any substantive analysis of the second and third prongs, which prevented the Petitioner a meaningful opportunity to challenge the determination on appeal. Consequently, we hereby withdraw the Director's decision and remand the matter so that the Director may issue a new decision that considers the Petitioner's evidence carefully.

On remand, the Director should review and evaluate the record to determine whether the Petitioner is well-positioned to advance his specific proposed endeavor, and on balance, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

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 both the underlying EB-2 classification as an individual of exceptional ability and each of the three prongs of

the *Dhanasar* framework. 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.