U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34031996

Date: JAN. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a nurse, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 record establishes that the Petitioner qualifies as a member of the professions holding an advanced degree, but does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. The Petitioner subsequently filed a combined motion to reopen and reconsider with the Texas Service Center. The motions were dismissed, and 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.

The Director dismissed the combined motions based on 8 C.F.R. §103.5(a)(1)(iii)(C), stating that the Petitioner's combined motions were not accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. However, the Director did not provide an analysis of the Petitioner's brief or of the new evidence that she submitted. Accordingly, we will withdraw the Director's latest decision and remand the matter for a new decision addressing the merits of the Petitioner's motion to reopen and reconsider.

III. CONCLUSION

We withdraw the Director's decision and remand the matter for a new decision which addresses the Petitioner's combined motions statement, and the additional evidence submitted. If the case meets the requirements for the motion to reconsider, the Director should determine if the Petitioner has

established eligibility for the underlying classification and for a national interest waiver and to enter a new decision. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

ORDER: The Director's decision is withdrawn.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