U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29337812

Date: Jan. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a postdoctoral research fellow, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish they merit 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. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

[1] *See also 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).

- 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.

II. EB-2 CLASSIFICATION

The Petitioner asserts that she is eligible for the EB-2 classification as an advanced degree professional; however, the Director did not evaluate her claim. On remand, the Director should evaluate the documentation submitted in the record to determine whether the Petitioner meets the requirements of an advanced degree professional. Also, as the Director did not address this issue in the request for evidence or denial decision, they should afford the Petitioner the opportunity to address any deficiencies in the evidence by issuing a second request for evidence if needed.

III. NATIONAL INTEREST WAIVER

The Director determined that the Petitioner was not eligible for, and did not otherwise merit, a national interest waiver. On appeal, the Petitioner contends that the Director ignored substantial evidence submitted in support of her petition and as a result did not reach a proper conclusion in denying her national interest waiver request. She further asserts that the reasoning used by the Director in the denial is confusing when addressing certain aspects of this case.

An officer must fully explain the reasons for denying a visa petition to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *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). Upon review, we agree with the Petitioner that the Director's reasoning is confusing and lacks substantial analysis of the evidence under the three prongs of the *Dhanasar* analytical framework. We are therefore remanding the case to the Director for further review and to provide an accurate and sufficient explanation of the grounds of denial so that the Petitioner can more fully understand the Director's concerns.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner's proposed endeavor has substantial merit, but not national importance.

The Petitioner indicated that her proposed endeavor is to "continue her research focused on investigating the phenotypical and genetic factors involved in hereditary colorectal cancer using her expertise in colorectal screening and next generation sequencing in order to improve screening methods and develop novel biomarkers." She submitted several publications and statistics addressing the prevalence and risks associated with colorectal cancer and obesity. We agree that this evidence is

sufficient to show that the Petitioner's proposed endeavor of continuing research in the field of colorectal cancer to help develop improved screening and treatment is of substantial merit.

Turning to the national importance of her proposed endeavor, the Director concluded that the endeavor did not have national importance but did not provide an analysis or explain the reasoning behind this conclusion. Moreover, as pointed out by the Petitioner on appeal, the Director did not identify or analyze the nature of the Petitioner's proposed endeavor at all in the decision, so it is unclear how such a determination was made.

Upon review, we agree with the Petitioner that the Director's decision is insufficient for review as it pertains to the proposed endeavor's national importance, and further note that the Director's reasoning is confusing. For example, the Director incorporates their analysis of the endeavor's national importance within their discussion of whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification, thereby conflating the evidentiary requirements for these distinct prongs within the *Dhanasar* framework.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates that the proposed endeavor has national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *See Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation, and should keep in mind that it is the national importance of the Petitioner's specific proposed endeavor that must be shown, not the importance of the overall field of colorectal cancer research. An endeavor having significant potential on the broader implications for a field or region generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.[2] The Director should review the record to determine whether the Petitioner has demonstrated her proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

In the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. We consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *See Dhanasar*, 26 I&N Dec. at 890.

The Director did not independently evaluate the Petitioner's eligibility under the second prong. As with the issue of national importance, the Director incorporated their analysis of whether the Petitioner is well positioned to advanced her proposed endeavor into their analysis of *Dhanasar's* third prong,

[2] *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policymanual.

again conflating the evidentiary requirements for these distinct prongs. Moreover, the Director's wording is again confusing, as they offered conflicting conclusions regarding whether the Petitioner satisfied this prong. On page three of the denial decision, the Director states: "Based on the evidence currently in the record, the petitioner was found to be well positioned to advance the proposed endeavor." However, on page four of the decision, the Director states that "she has not shown that her experience and education alone are sufficient to establish that she is well positioned to advance the proposed endeavor" and concludes that an expert opinion letter, the contents of which were not discussed in detail, was likewise insufficient to demonstrate that the Petitioner is well positioned to advance the proposed endeavor.

On appeal, the Petitioner notes these discrepancies and states that she is "simply unable to interpret USCIS's evaluation of the second prong under *Dhanasar*." We agree with the Petitioner that the Director presented confusing analysis and conflicting conclusions in the denial with regard to this prong. Again, an officer must fully explain the reasons for denying a visa petition to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the Petitioner is well positioned to advance the proposed endeavor, and should articulate the basis for finding whether the evidence shows or fails to show that she is well positioned to advance her endeavor. If the Director concludes that the Petitioner's documentation does not meet *Dhanasar's* second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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

As to the third prong of *Dhanasar,* the Director stated the law and the relevant considerations in performing the third prong's balancing analysis and concluded that the Petitioner "has not submitted documentary evidence that demonstrates 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 appeal, the Petitioner asserts that the decision "reached conclusions that are inconsistent with and not supported by the evidence of record" and thus constitutes an abuse of discretion pursuant to *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994).

The Director did not sufficiently acknowledge and address the evidence of record as to the third prong, and did not discuss the evidence weighed in balancing the relevant considerations. On remand, the Director should address all of the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786.

IV. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as an advanced degree professional. In addition, 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. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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