U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35712465

Date: JAN. 17, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a sales manager in the packaging industry, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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 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

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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. *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:

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is 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.

Id.

II. ANALYSIS

The Petitioner, a sales manager in the packaging industry, proposes to continue working in this role in the United States for various companies. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree based on his possession of the foreign equivalent of a U.S. master's degree in business administration. However, the Director concluded the Petitioner did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of the *Dhanasar* analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. In denying the petition, the Director determined that although the proposed endeavor had substantial merit, the Petitioner provided insufficient evidence to establish the proposed endeavor's national importance. The Director determined that the Petitioner had not shown that his proposed endeavor had significant potential to employ U.S. workers, would offer substantial positive economic effects for the United States, or that the benefits to the national economy resulting from the proposed endeavor would reach a level contemplated by the *Dhanasar* framework.

On appeal, the Petitioner asserts that the Director did not fully evaluate the evidence submitted in support of his eligibility for a waiver of the required job offer, and thus of the labor certification. Specifically, the Petitioner contends that the decision "omitted a very detailed analysis regarding the national importance of [his] proposed work," noting that despite providing a detailed breakdown of five distinct aspects of the proposed endeavor in response to the Director's request for evidence (RFE), the decision vaguely concluded that the Petitioner had not demonstrated the national importance of his proposed endeavor without considering his supplemental evidence.[2] The Petitioner further asserts that the Director's decision did not reflect consideration of the evidence provided in response to the RFE, noting that the decision directly quotes three paragraphs from the RFE as a basis for the denial.

Collectively considering the evidence submitted prior to the Director's decision, we agree with the Petitioner that his evidence was not given due consideration. An officer must fully explain the reasons for denying a visa petition in order to allow the 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 denial to allow the respondent a meaningful opportunity to challenge the determination on

[2] The record reflects that the Director did not consider the statements and supporting evidence provided in response to the RFE, which included a discussion on how the proposed endeavor would protect the environment, provide cost savings in warehouse logistics and supply chain, and have specific implications for the food and beverage industry, the cosmetic industry, and the packaging industry.

appeal). While the Director listed the evidence submitted in support of the petition and in response to the RFE in the denial, the decision does not adequately address the documentation in the record.

The Petitioner provided support letters from counsel, letters of recommendation, letters of interest from U.S. companies, articles related to sales management and the packaging industry, and other supporting materials regarding the economic and environmental impacts of packaging materials on the U.S. economy. The Director should analyze this evidence to determine whether the record sufficiently demonstrates the 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. 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.[3]

The Director should review the record to determine whether the Petitioner has demonstrated his 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 requirement 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. *Id.* at 890.

For *Dhanasar's* second prong, the Director, as noted by the Petitioner, provided conflicting statements regarding whether this prong has been met. In the RFE, the Director stated that "the beneficiary submitted evidence that establishes he is well positioned to work as a sales manager at a packing company. Therefore, the beneficiary has established that he is well positioned to advance the proposed endeavor." In the denial, however, the Director initially states that "the beneficiary has not submitted sufficient documentary evidence that demonstrates she [*sic*] is well positioned to advance the proposed endeavor," but concludes the analysis by stating that the Petitioner has established that he meets this prong. The Director's conclusion with regard to this prong, therefore, is unclear.

Again, an officer must fully explain the reasons for denying a petition in order 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)(l)(i); *see also Matter of M-P-,* 20 I&N Dec. 786. Here, the Director's decision did not address the evidence submitted with the petition or in response to the RFE in support of the second prong, and does not clearly articulate whether the Petitioner's evidence was sufficient to satisfy this prong. The Director should analyze the specific content of the record to determine if the Petitioner's evidence renders him well positioned to advance the proposed endeavor. If the Director

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

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 "on balance, it would not be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification," noting that the Petitioner could not satisfy the third prong because he had not satisfied prongs one and two. However, the Director did not discuss the evidence weighed in balancing those considerations or address the Petitioner's specific claims as to the third prong. Moreover, in concluding he had not satisfied the third prong, the Director again rendered an inconsistent conclusion regarding whether the Petitioner had demonstrated he was well positioned to advance the proposed endeavor under prong two. Without a proper evaluation of the factors identified in *Dhanasar's* third prong, the Director's determination for this prong was in error. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

For the reasons outlined above, we are remanding the petition to the Director to determine if the Petitioner has established eligibility for a national interest waiver and to enter a new decision. 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.