U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29549088

Date: JAN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and chief executive officer who intends to establish a food manufacturing and distribution business, 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 record did not establish 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision lacks analysis and discussion of the evidence in the record and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. 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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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 a degree of expertise significantly above that ordinarily encountered in the field.

Although the Petitioner submitted evidence to establish that he met five (of the six) criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), the Director did not make a determination with respect to whether the Petitioner qualifies for EB-2 classification as an individual of exceptional ability.[1] The Director observed in a request for evidence (RFE) that the Petitioner's initial evidence satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (E), but did not address his response to the RFE, which included additional evidence relating to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (E) and (F).

On remand, the Director should evaluate the Petitioner's evidence and determine if he has met at least three of the above criteria. If the Petitioner is found to meet at least three criteria, the Director must then conduct a final merits determination and review the evidence in its totality to determine if he has established he possesses a degree of expertise significantly above that ordinarily encountered in his field. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual (describing the two-step evidential review process used in determinations for exceptional ability petitions).

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar,* 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that we may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- 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.

The Director determined, without discussion of the submitted evidence, that the Petitioner did not meet his burden to establish the substantial merit and national importance of his proposed endeavor, and that on, balance, it would benefit the United States to waive the job offer requirement. While the Director generally listed some of the types of evidence the Petitioner submitted, the decision does not explain why such evidence was determined to be insufficient to meet the first and third prongs under the framework established in *Dhanasar*. For example, in addressing the "substantial merit" element of the first prong, the Director provided only a conclusory statement, noting, "the evidence does not support the petitioner's statement that the proposed endeavor has substantial merit." Further, the Director did not reach a determination regarding whether the Petitioner established that he is well-positioned to advance the proposed endeavor under the second prong.

On appeal, the Petitioner asserts that the Director's decision does not explain the specific reasons for denial, noting that the lack of clarity leaves him "unable to address or rectify the perceived inadequacies that led to the negative outcome."

[1] The Petitioner did not submit evidence to establish that he qualifies for EB-2 classification as a member of the professions holding an advanced degree.

[2] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding the U.S. Citizenship and Immigration Service's decision to grant or deny a national interest waiver to be discretionary in nature).

We agree with the Petitioner's assertion that the decision is deficient. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, 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 the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, the decision did not meet these requirements.

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he 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 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.