U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29046851

Date: JAN. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a children's Christian ministry educator and creator of related social media content, 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 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 because the Director's decision is insufficient for review.

A. EB-2 Classification

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.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

The Director determined that the Petitioner was an advanced degree professional within the meaning of 8 C.F.R. § 204.5(k)(2) stating "the . . . evidence . . . establishes [the Petitioner] completed her Bachelor of Divinity and Education and thus qualifies as a member of the professions holding an advanced degree." The Director's analysis was incomplete. In addition to possessing a bachelor's

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

degree, under 8 C.F.R. § 204.5(k)(2) a Petitioner must also establish that she has five years of progressive experience in the specialty. On remand, the Director should evaluate the evidence, including two letters from [redacted], to determine if the Petitioner has established she is an advanced degree professional based on the definition found at 8 C.F.R. § 204.5(k)(2).

B. National Interest Waiver

Once a petitioner demonstrates eligibility for the underlying classification, they 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.

On appeal, the Petitioner incorrectly states that the Director concluded her proposed endeavor has substantial merit and national importance. Other than stating the standard, the Director did not conduct any analysis of the evidence submitted or provide any determination. Therefore, the Director should review the submitted evidence and provide a meaningful discussion of its deficiencies.

For example, the Petitioner notes that the current labor shortage of teachers supports the national importance of her endeavor. However, the labor certification process itself is intended to address labor shortages and her proposed endeavor does not appear to alleviate the shortage of teachers to a degree that would be considered of national or global impact. While her response to the Director's request for evidence (RFE) explained the socio-economic impact of religion to the U.S.'s economy, the industry or field is not the lens through which we determine if a proposed endeavor is of national importance. Instead, we look at the impact of "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. Further, without evidence regarding any projected U.S. economic impact or job creation directly attributable to her future work, we cannot conclude that benefits to the regional or national economy resulting from her endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar. Id.* at 890.

She further asserts that her endeavor would help "[t]he large community of Brazilian children that lives in her city . . . as the communication barrier will cease to exist, and she will provide public services and . . . mental health support and guidance to these kids and their families." While these factors may establish the substantial merit of her endeavor, they do not appear to reach the level of broader national or global impact that is required to find an endeavor has national importance. For example, in *Dhanasar*, we determined that a STEM teacher's proposed endeavor had substantial merit, but that the record did not establish his teaching activities would impact the field of education more broadly. *Id.* at 893.

[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).

Similarly, her [redacted] channel and her press coverage also do not speak to the broader implications of her specific endeavor. The article [redacted] shows a photograph of her in a costume and quotes her belief that Christian churches should focus on growing children's faith to combat the rising secularism in the United States. While this article highlights the Petitioner's passion for children's ministry, and her thoughtful consideration of problems facing Christian churches, it does not discuss how it would impact the field of education or religious education more broadly.

Here, the Director should determine whether the record shows, for example, that the Petitioner's proposed endeavor: (1) stands to sufficiently extend beyond her students to impact the field more broadly at a level commensurate with national importance; (2) offers original innovations that contribute to advancements or otherwise has broader implications for her field; or (3) has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

Further, the Director's analysis regarding *Dhanasar's* prong two and prong three was also inadequate because it did not accord the Petitioner with a meaningful understanding of the reasons her evidence was insufficient. While we may agree with the Director's ultimate conclusion that she has not established eligibility for a national interest waiver under the *Dhanasar* analysis, 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).

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 determine anew whether the Petitioner qualifies as an advanced degree professional and provide a sufficient analysis under each of the three prongs of the *Dhanasar* framework.

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