U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31569873

Date: JUL. 22, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrician, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business, 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 the Petitioner did not meet the criteria for the EB-2 immigrant classification as an individual holding an advanced degree or as an individual of exceptional ability. On appeal, the Petitioner does not contest the advanced degree finding, but does contest the finding he is not an individual of exceptional ability. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 their 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.

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.

II. ANALYSIS

In October 2022, the Petitioner filed his Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver). In April 2023, the Director issued a request for evidence on this petition. Regarding the Petitioner's claim to exceptional ability and the six categories of evidence needed to establish eligibility, the Director requested evidence for all categories except the first one, 8 C.F.R. § 204.5(k)(3)(ii)(A), concerning an official academic record showing he has a degree, diploma, certificate, or similar award from an institution of learning relating to his area of exceptional ability. For this first category, the Director stated that the Petitioner met the criteria because he submitted a Level 3 certificate in Electrical Technology Engineering and an apprenticeship certificate for a Powerline Technician.

Then, in her decision, issued in November 2023, the Director contradicted the RFE, finding that the Petitioner did not meet the first category, citing to his apprenticeship certificate and Powerline Technician certificates, but seemingly failing to consider the Level 3 certificate in Electrical Technology Engineering from the [redacted] which was considered in the RFE. The Director goes on to find that the Petitioner has met the second category, 8 C.F.R. § 204.5(k)(3)(ii)(B), having ten years of full-time work experience as an electrician, and the fifth category, 8 C.F.R. § 204.5(k)(3)(ii)(E), membership in a professional association. The Director also explains the Petitioner did not meet the other criteria, including the third category, 8 C.F.R. § 204.5(k)(3)(ii)(C), on having a license or certification for the profession or occupation.

Finally, despite having found the Petitioner met only two categories, the Director moves on to a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. In the first sentence of this analysis, the Director appears to be possibly contradicting her findings above, asserting that the Petitioner has established he has an education, license, and professional membership in the field of a powerline technician. More notable, if the Director is summarizing the stronger points of the Petitioner's abilities, she does not mention the Petitioner's full-time work experience as an electrician, which spans over ten years. She then concludes that because the record does not include evidence that the Petitioner's experience and/or achievements surpass others in his field or provide significant contributions to the field, he has not demonstrated how his expertise is significantly above other individuals in the field and thus one of exceptional ability.

Here, the reasons for the denial are contradictory, unclear, and indicate that evidence was overlooked in the decision. First, given the finding in the RFE and the final merits analysis, it is not clear which categories the Petitioner has met or not met. Second, following from this lack of clarity, the final merits determination calls into question whether the totality of the evidence was meaningfully considered or understood, most egregiously in the context of not considering the over ten years of work experience the Petitioner demonstrated. Furthermore, the Director's conclusion that the record does not include evidence that his experience and/or achievements surpass others in his field or provide significant contributions to the field is lessened by the failure to analyze or even mention the evidence relevant to not only his years of experiences, but also the six letters of support and a news article about his work submitted with his initial petition.

An officer must fully explain the reasons for denying the application to allow the petitioner a fair opportunity to contest the decision and to afford us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

What is required is that the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 435 (9th Cir. 2021) (citing *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021); *see also Osuchukwu v. INS*, 744 F.2d 1136, 1143 (5th Cir. 1984). If evidence is highly relevant, the adjudicating body must at least acknowledge that evidence, either implicitly or explicitly, in its decision. The decision must create the conviction that it "considered and reasoned through" the highly relevant evidence. *Farah*, 12 F.4th at 1329 (citing *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1331 (11th Cir. 2019)).

Because we are unable to conclude the Director clearly explained the reasons for the denial and reviewed the entire record, we will withdraw the decision and remand this matter for further consideration and entry of a new determination. 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 well as each of the three prongs of the *Dhanasar* framework.[1] 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.

[1] Although we will not reach an analysis of the national interest waiver *Dhanasar* framework here, the current record does not appear to show the Petitioner meets the three prongs of this framework.