U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31498273

Date: JUL. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental engineer, 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 the Petitioner had established eligibility for a national interest waiver. 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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. While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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:

- 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.

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. *Id.* at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, 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.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

II. ANALYSIS

The Director found that the Petitioner was qualified for EB-2 classification as a member of the professions holding an advanced degree. The Director indicated that the Petitioner met the classification due to the PhD she obtained from the [redacted] As the Petitioner notes on appeal, she does not have a PhD nor has she attended the [redacted] The Director's finding of EB-2 qualification on this basis is therefore withdrawn. However, the record independently supports a finding that the Petitioner qualifies for EB-2 classification. The Petitioner obtained her degree in Environmental Engineering in Brazil, a course of study equivalent to at least a Bachelor's

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

degree in the United States.[2] Subsequent to completion of this degree, the Petitioner accrued over five years of progressive experience in environmental engineering.

The Petitioner intends to work as an environmental engineer in the United States. In her initial petition, she further specified that she will open and operate an environmental engineering firm, where she will primarily focus her efforts in two areas: providing consulting services, and undertaking technology and product development. First, she indicates that she will provide consulting services to businesses to assist them in providing innovative solutions for water and energy efficiency, waste management, and sustainable building practices. Second, she intends to bring technological innovations to the green construction industry in the United States. In particular, she intends to expand the use of three products she previously developed that are already in use in Brazil; she hopes to introduce these and other technological advancements to the U.S. construction market.[3]

A. Substantial Merit and National Importance

The Director found that the Petitioner's proposed endeavor had substantial merit but that she had not demonstrated its national importance. In reaching this conclusion, the Director noted that the proposed endeavor would benefit the Petitioner and her direct clients. The Director found that the Petitioner intended to further her career as an environmental engineer but determined that she had made only broad assertions to support her proposal and had not demonstrated the importance of the specific endeavor; rather, she had provided evidence showing the relevance of the environmental engineering field and STEM fields generally. In addition, she had not shown the broader benefit of her work to the field of environmental engineering or that the endeavor would create a substantial economic impact.

The Petitioner argues on appeal that the Director failed to consider significant portions of the record in reaching the national importance determination. She highlights that her work has a "transformative impact" in time-sensitive areas including sustainable infrastructure and energy efficiency. She emphasizes that she has advanced her field by developing new technologies and will continue to bring this innovation to her proposed endeavor. This in turn impacts the field at a national level, as it contributes "to the broader goal of promoting clean and sustainable energy" and supports U.S. climate control objectives. The Petitioner argues that she was not afforded a fair and thorough review, as the request for evidence and decision were boilerplate and contradictory.

We agree that the Director's decision did not analyze the full scope of her proposed endeavor. The Petitioner's proposed endeavor includes specifics beyond her intention to continue her career in environmental engineering, but these were not addressed. In addition, the Director listed the evidence provided with the initial petition and in response to a request for evidence, but the decision did not meaningfully consider the details of a significant portion of this evidence. The Director did not address her intention to expand the use of her current portfolio of technologies or her intention to develop new technologies in the future as she continues her work with clients. Rather, the analysis is primarily

[2] *See* https://www.aacrao.org/edge/country/brazil for information regarding the education system in Brazil.

[3] The Petitioner's existing products are [redacted], a concrete building block using a new production method to reduce construction time and finishing material usage; [redacted] a software program that automates various functions and calculations required for solar panels; and [redacted] a software program used during a building's construction phase that improves the energy efficiency of circuits and electrical points.

limited to a discussion of the letters of reference and the expert opinion letter included with the filing.[4] The Director also indicated that the discussion of her technologies in the letters of support was relevant to her ability to advance the proposed endeavor in prong two, rather than establishing the national importance of her proposed endeavor under prong one. However, the Petitioner's proposed endeavor includes, in part, the expansion and integration of these technologies into the U.S. construction market. These details should have been considered when evaluating the potential prospective impact of her endeavor.

B. Well Positioned to Advance the Proposed Endeavor

As evidence for *Dhanasar*'s second prong, the Petitioner presented, in relevant part, her academic records, publications, patent submissions, work experience, and letters from employers and colleagues attesting to her work on large-scale sustainability initiatives, her development of new technologies, and her experience in sustainable construction projects.

While the decision indicates that the Petitioner is not well-positioned to advance her endeavor, the Director's decision does not contain a separate section analyzing the Petitioner's eligibility under this prong, and the basis for this determination cannot be clearly understood. 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 appeal). Here, the Director's decision did not adequately address the evidence submitted with the petition or in response to the RFE.

C. Whether on Balance a Waiver is Beneficial

The Director did not undertake a complete analysis under prong three of the *Dhanasar* framework. The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be

[4] The Director determined that the expert opinion letter by Mr. [redacted] was of "little probative value," finding it to be conclusory and lacking in "detailed analysis and support." We disagree. While the expert opinion letter does include some conclusory language, it also provides concrete details of the Petitioner's past projects and product development.

Though somewhat unclear, it appears the Director also may have given limited weight to remaining letters of reference. The decision indicates that "USCIS may even give less weight to an opinion that is not corroborated in accord with other information or is in any way questionable," citing to *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998). As the Director's decision does not indicate what information is questionable or uncorroborated, any decision to afford less weight to these letters has not been properly supported, and we cannot meaningfully assess the Director's reasoning on appeal. The Director should fully assess the contents of these letters on remand and adequately support any decision to afford them less weight.

beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Dhanasar,* 26 I&N Dec. at 890-91.

The Director concluded the Petitioner had not established the benefits of waiving the labor certification, because she had not demonstrated an "urgent national interest in her own contributions." Likewise, she had not shown that her contributions were of such value that they would benefit the United States even if other qualified U.S. workers were available. The Director also reiterated that the Petitioner had not satisfied the national importance as required by the first prong of the *Dhanasar* framework.

The Director did not support the determination in part three with analysis. We agree with the Petitioner's contentions on appeal that the Director's decision did not discuss specific evidence on the record or address her arguments relating to eligibility for *Dhanasar*'s third prong. 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 on remand 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

The Petition is remanded for the Director to fully consider the record and provided evidence, included the evidence of the Petitioner's work with technological advancements and sustainable building practices, as well as the specifics of her educational and employment history. The Director should then 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.

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