U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31285545

Date: JUN. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 the Petitioner had not established eligibility for 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 as the decision lacks analysis and discussion of the evidence in the record 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.

I. LAW

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. If a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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," *Matter of Dhanasar*, 26 I&N Dec. 884 (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:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined in this appeal is whether 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.

A petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. In other words, a petitioner must show that what she claims is "more likely than not" or "probably" true. USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Additionally, to determine whether a petitioner has met their burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). The Petitioner must establish that she is eligible for a national interest waiver as of the date of filing the petition, which in this case is April 28, 2023. 8 C.F.R. § 103.2(b)(1).

The Petitioner provided a statement describing her proposed endeavor as a scientist engaged in artificial intelligence (AI) research, in part, as follows:

> My personal endeavor is to utilize [AI] for biomedical imaging data analysis in clinical diagnostics and personalized treatments. I intend to advance the integration of AI into biomedical imaging data analysis, and my goas is to utilize AI for precise quantification of the morphology and function in medical images to provide accurate disease predictions for patients. . ..
>
> My job involves developing accurate and effective AI models, including designing, testing, and refining deep learning models for specific biomedical imaging challenges. . .. I have been able to develop AI models for real clinical usage such as [D-S-] model for lung nodule detection (lung cancer) and [A-] model for fine-grained brain structural segmentation (neurodegenerative disorders).

The Director denied the petition, determining that the Petitioner did not satisfy the second and third prongs of the *Dhanasar* analytical framework. On appeal, the Petitioner asserts that the Director failed

[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 to be discretionary in nature).

to evaluate all the relevant evidence in determining that she was ineligible for the waiver. The Petitioner also contends that the Director did not specifically discuss the evidence provided in support of the waiver request in the denial decision.

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 *Dhanasar's* second prong, the Director concluded that the Petitioner was not well positioned to advance the proposed endeavor but did not sufficiently explain the basis for the determination. On appeal, the Petitioner argues that the Director ignored evidence of her academic qualification, professional achievements, and experience in the field. She relies on the evidence previously submitted to the Director and reiterates her qualifications and the ways in which she has and will influence the field of AI research, AI's uses in clinical diagnostic imaging and medical research, and her commitment to advance the proposed endeavor. Although the Director listed some of the types of documents submitted by the Petitioner and generally concluded that they were insufficient, the decision does not collectively analyze the evidence or adequately explain why her evidence was deficient.

The Director should analyze the evidence to determine if the Petitioner is well positioned to advance the proposed endeavor and should consider all the evidence offered for prong two, including the Petitioner's personal statements and academic record, her published research and citation record, and her contributions as a peer reviewer of the research of others, grant funding for her research projects, and the letters of support and recommendation. The Director should analyze the specific content of the record to determine if this documentation renders the Petitioner well positioned to advance the proposed endeavor. If the Director 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.

As to the third prong of *Dhanasar,* the Director again concluded that the Petitioner's evidence was insufficient to meet this prong. The Director concluded "the record does not demonstrate the widespread benefits associated with [her] endeavor working as a researcher in the [AI] field," [or whether it] "may lead to potential creation of jobs." Although the Director stated some of the relevant considerations in performing the third prong's balancing analysis, they did not discuss the evidence weighed in balancing those considerations. 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 why she is ineligible.

III. CONCLUSION

Accordingly, we are remanding the petition for the Director to properly apply the 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. 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.