U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30211836

Date: JUN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial and investment analyst and consultant, 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 record did not establish that the Petitioner qualifies for the requested EB-2 classification or that he is eligible 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). 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.

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility 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. 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. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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, 889 (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 their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. EB-2 CLASSIFICATION

The Director denied the petition, in part, based on a determination that the Petitioner did not establish his eligibility for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the arts, sciences or business.

On appeal, the Petitioner contends that the previously submitted evidence was sufficient to demonstrate his eligibility as an advanced degree professional. The Petitioner also questions the Director's decision to address his eligibility as an individual of exceptional ability, noting he never articulated a claim that he is eligible for that classification.

The Petitioner provided an official academic record for his foreign degree and a professional evaluation of his academic credentials demonstrating that he has attained the foreign equivalent of a bachelor's degree in business administration. Further, we conclude that the Petitioner has demonstrated, by a preponderance of the evidence, that he has more than five years of progressive post-baccalaureate work experience in the field of business development. While the Director determined that the experience letters the Petitioner submitted did not comply with all requirements of 8 C.F.R. § 204.5(g)(1), that regulation also states that if primary evidence is unavailable, "other documentation relating to the [individual's] experience . . . will be considered." Here, the Petitioner provided a credible explanation for his submission of secondary evidence of his work experience. Further, the evidence provided was sufficient to meet his burden of proof and demonstrate that he has an advanced degree as defined at 8 C.F.R. § 204.5(k). Accordingly, we withdraw the Director's determination that the Petitioner did not establish his eligibility for EB-2 classification.

III. NATIONAL INTEREST WAIVER

The remaining issue is whether the Petitioner established that it would be in the national interest to grant him a discretionary waiver of the job offer requirement that applies to the advanced degree professional classification.

In evaluating the Petitioner's eligibility for a national interest waiver, the Director determined that the Petitioner established the substantial merit of his proposed endeavor to provide services as a financial

[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).

and investment analyst and consultant, but did not establish the national importance of the endeavor, that he is well-positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner asserts that the Director did not evaluate most of the evidence submitted to establish his eligibility under the three prongs of the *Dhanasar* framework and applied inappropriate standards that are not addressed in *Dhanasar* or in the applicable *USCIS Policy Manual* guidance. As such, the Petitioner maintains that the decision does not provide an adequate explanation for the denial of the petition.

Upon review, the Petitioner's assertions are persuasive. An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the 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 a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, for the reasons discussed below, the Director's decision was insufficient and did not allow the Petitioner a meaningful opportunity to address any deficiencies on appeal.

In evaluating whether the Petitioner's proposed endeavor has national importance, the Director acknowledged that he submitted a business plan and personal statement, but nevertheless concluded the petitioner "did not provide a detailed description of the proposed endeavor." This conclusion led to an inadequate discussion of the evidence in the record submitted to establish the endeavor's national importance.

The record reflects the Petitioner submitted two personal statements in which he provided consistent and detailed descriptions of his proposed endeavor. In addition, as acknowledged by the Director, he provided a business plan for the financial and investment consulting company he is operating in Florida. The Director's determination that the Petitioner did not provide a detailed description of the proposed endeavor was not adequately explained and is not supported by the record.

Further, the Director did not discuss most of the evidence submitted to demonstrate the national importance of the proposed endeavor, which included, but was not limited to: the business plan for the Petitioner's Florida company; two expert opinion letters; letters of interest from other professionals in the field; articles providing background on the Petitioner's industry and occupation; and evidence intended to support the Petitioner's claim that his endeavor will have substantial positive economic effects, will enhance societal welfare, and will impact a matter that is the subject of national initiatives. These factors are relevant to a determination regarding the potential prospective impact of his proposed endeavor under the *Dhanasar* framework and should be weighed as part of the first prong analysis. In fact, the Director had specifically instructed the Petitioner to address such factors in his response to the RFE, but then failed to give those claims due consideration. If the Director concludes that the Petitioner does not meet the national importance requirement under *Dhanasar*'s first prong, the decision should discuss the deficiencies in the evidence and adequately explain the reasons for ineligibility.

In addressing whether the Petitioner is well-positioned to advance the proposed endeavor under *Dhanasar*'s second prong, the Director applied standards that are outside the scope of the analytical framework established in *Dhanasar*. In doing so, the Director overlooked or was dismissive of evidence relevant to the second prong analysis, which requires consideration of the individual's education, skills, knowledge and record of success in related efforts, whether they have a model or plan for future activities, any progress the individual has made towards achieving the proposed endeavor, and evidence of the interest of potential customers, users, investors, or other relevant entities or individuals.

The record reflects that although the Petitioner submitted evidence related to all these factors, the Director did not properly weigh this evidence in the second prong analysis. Rather, the Director's analysis under the second prong discusses appears to be based, in part, on a determination that the Petitioner did not demonstrate "that he has influenced the field beyond the normal expectations of a financial and investment analyst and consultant." The Director also questioned whether the Petitioner's social media-related evidence was indicative of "national importance," noting "the record lacks comparative evidence showing the follows or posts of other business consultants who are of exceptional ability in the [Petitioner's] field." The Petitioner is not required to demonstrate an exceptional level of influence in his field or "national importance" under *Dhanasar*'s second prong, nor is he required to submit comparisons between himself and persons of exceptional ability in the field.

In addition, although the Director briefly mentioned the Petitioner's letters of recommendation, the decision is dismissive of the letters because they did not "explain how [the Petitioner's] numerous personal accomplishments constitute recognition of achievements and significant contributions to the field of business." The Petitioner is not required to demonstrate such recognition to establish eligibility for a national interest waiver under *Dhanasar*'s second prong. It appears the Director erroneously applied the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), which is one of the six evidentiary criteria applicable to persons seeking classification as individuals of exceptional ability.

The Director should analyze the specific content of the record to determine if the evidence demonstrates that the Petitioner is, more likely than not, 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.

Finally, in analyzing whether it would benefit the United States to waive the requirement of a job offer under *Dhanasar*'s third prong, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis but 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 was conclusory. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address his arguments and evidence, and explain the relative decisional weight given to each balancing factor.

While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver, the Director's determination that he did not satisfy any of the three prongs did not adequately address the evidence and arguments submitted, did not discuss

most of the relevant factors set forth in *Dhanasar*, applied inapplicable standards, and therefore did not sufficiently explain the reasons for denial.

Therefore, 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 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.