U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30635935

Date: JUN. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a certified public accountant and financial advisor, 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 although the Petitioner demonstrated his eligibility for the requested EB-2 classification, the record did not establish that a waiver of the required job offer would be in the national interest. 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. Specifically, 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.

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. Here, the record supports the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree based on his attainment of the foreign equivalent of a bachelor's degree in accounting followed by five years of progressive work experience in this specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree").

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.

In evaluating the Petitioner's request for a national interest waiver, Director concluded that he had not established the national importance of his proposed endeavor or demonstrated that, on balance it would be beneficial to the United States to waive the job offer requirement. The Director did not address whether the Petitioner established that his proposed endeavor has substantial merit and whether he is well-positioned to advance it.

An officer must fully explain the 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.

The Director's decision includes a discussion of the nature of the Petitioner's proposed endeavor. The Director observed that the Petitioner, at the time of filing, "failed to specify his proposed endeavor and failed to explain how the evidence in the record demonstrates he satisfied the three-prong test under *Dhanasar*." To the contrary, the Petitioner's initial evidence included considerable evidence related to his proposed endeavor to own and operate a Florida-based financial advisory and business consulting firm called [redacted] This evidence included documentation of the company's establishment, a five-year business plan, screenshots from the company's website, an investment agreement between [redacted] and another U.S. company, recommendation letters, an expert opinion letter from a university professor that addresses the Petitioner's eligibility under all three prongs of the *Dhanasar* framework, and a cover letter that describes the proposed endeavor and the elements of *Dhanasar*'s three-prong analysis.

In response to a request for evidence (RFE), the Petitioner submitted an updated business plan for his consulting firm and other relevant evidence. However, the Director appeared to conclude that the Petitioner had made a significant change to his proposed endeavor, erroneously observing that "it appeared that the [initial] proposed endeavor was for the petitioner to work as a CPA for various companies." It is therefore unclear whether the Director, in applying the *Dhanasar* framework, ultimately evaluated the proposed endeavor as it was consistently described in the record.

[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).

The first *Dhanasar* 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

Here, the Director concluded that the Petitioner had not established the national importance of his proposed endeavor. However, the Director's determination was conclusory and did not provide an analysis of the Petitioner' evidence or explain the reasoning behind this conclusion. As noted, the Petitioner submitted a business plan, recommendation letters, an expert opinion letter and other documentation in support of his claim that his proposed endeavor meets the first prong of the *Dhanasar* framework, none of which were addressed in the Director's decision. As this matter will be remanded, the Director should review the record to determine whether the proposed endeavor has substantial merit and national importance. If the Director concludes that the Petitioner's evidence does not meet the substantial merit or national importance elements of *Dhanasar*'s first prong, the decision should discuss the insufficiencies in the evidence and explain the specific reasons for ineligibility.

The Director reached a similarly conclusory determination with respect to *Dhanasar*'s third prong and did address whether the Petitioner is well-positioned to advance the proposed endeavor under *Dhanasar*'s second prong. Again, an officer must explain the specific reasons for denying a petition. *See* 8 C.F.R. § 103.3(a)(1)(i).

While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver of the job offer requirement, the Director did not adequately address the evidence and arguments submitted with the initial filing and in response to the RFE, did not discuss most of the relevant factors set forth in *Dhanasar*, and therefore did not sufficiently explain the reasons for denial.

Therefore, we 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. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision. 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.