U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30291370

Date: MAR. 11, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner is a mechanical engineer who 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 (NIW) 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that he merits a discretionary waiver of the job offer requirement in the national interest. 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.

To establish eligibility for an NIW, 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.

Once 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, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

Throughout the proceedings, the Director did not provide any analysis or express a determination relating to the Petitioner's underlying claims relating to the EB-2 classification. The Director issued a request for evidence and the Petitioner responded providing additional evidence and claims. The Director issued a concise denial that did not adequately discuss the Petitioner's additional materials, which leads us to find the record inadequate for review. An officer must fully explain the reasons for denying the application in order 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)). In the same manner that filing parties must adhere to the process and procedural requirements, so must we as government representatives. "If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021).

Because we are unable to conclude the Director adequately explained the reasons for the denial, we will withdraw their 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. 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.