U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37434249

Date: MAR. 20, 2025

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 for the Beneficiary 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 Beneficiary qualified for classification as a member of the professions holding an advanced degree, but the Petitioner had not established that 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. 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). 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. 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 the underlying EB-2 visa classification, a petitioner must establish that a beneficiary is an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that a discretionary waiver of the job offer requirement "in the national interest" is merited. Section 203(b)(2)(B)(i) of the Act. *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.

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

Id.

In applying the *Dhanasar* framework, the Director determined that the Petitioner had established the substantial merit of the Beneficiary's proposed endeavor and that he is well-positioned to advance it but concluded that the record did not establish the national importance of the endeavor and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner asserts that the Director's decision "misstated facts, mischaracterized and omitted evidence, and misapplied the *Dhanasar* framework in its (often conclusory) analysis of this case." The Petitioner further contends that the Director made "several critical errors of fact and law in its analysis" of national importance as detailed in prong one of the *Dhanasar* framework, and with respect to prong three of the *Dhanasar* framework, that on balance, it would benefit the United States to waive the job offer requirement, by not engaging with the evidence of record or analyzing the arguments presented by the Petitioner. The Petitioner contends that the evidence submitted was sufficient to establish eligibility for the requested national interest waiver.

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. *C.f. 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). Upon review, we agree that the Director's decision did not properly analyze the evidence submitted and therefore does not sufficiently explain the reasons for denial.

In describing the proposed endeavor, the Director's decision states that the "[s]elf-petitioner proposes to use his subject matter expertise, advance education, and position at [redacted] to drive innovation in advance computing, specifically in data processing and analysis techniques within data engineering, by developing cutting-edge techniques and architectures for scalable, efficient, and privacy-compliant data processing systems. His work focuses on enhancing the performance, reliability, and secure (sic) of data pipelines, thereby facilitating robust data analytics and business intelligence solutions. Specifically, he aims to transform the technology stack for business marketing at [redacted], ensuring seamless data integration and effective utilization of vast datasets." The Director later noted in the decision to deny the petition that the "petitioner intends to work as a Lawyer, analyzing the probable outcomes of cases, using knowledge of legal precedents." The record reflects that the matter before us does not pertain to a self-petitioner who works for [redacted] or a lawyer. Here, as correctly noted by the Director later in the decision to deny the petition, the Petitioner's mission is to develop compact and efficient power systems based on advanced thermodynamics, rotary engine technology, and integrated hybrid electric platforms; the Beneficiary is employed as a senior modeling and simulation engineer for the Petitioner; and the proposed endeavor for the Beneficiary is to "develop novel heavy-fuel and hybrid engines for military applications from conceptualization to production."

Moreover, the Director noted that the Beneficiary had not shown that working for and providing expertise to the Petitioner would "undoubtedly benefit the United States through increased income, employment of U.S. workers, and contribution to the country's Gross Domestic Product (GDP)." However, as the Petitioner contends on appeal, such an assertion was never made by the Petitioner or the Beneficiary.

Further, the Director's summary of the evidence provided by the Petitioner with the initial filing and in response to a request for evidence (RFE) is not completely accurate, as it fails to reference documents that were provided in support of the petition, including evidence of contract awards establishing work for the U.S. Department of Defense, who the Petitioner contends is their primary 'client'; a supplemental letter from the Petitioner in response to the RFE addressing deficiencies raised by the Director; and documentation evidencing the Beneficiary's publications and presentations. These errors raise questions as to whether the Director's analysis was based on review and consideration of all the evidence submitted in support of the petition.

The Director's determination that the Petitioner did not establish the national importance of the Beneficiary's proposed endeavor rests largely on a conclusion that they did not establish the significant potential to employ U.S. workers or other substantial positive economic effects consistent with national importance. However, the Petitioner articulated claims that the proposed endeavor is nationally important because it focuses on critical and emerging technologies, advances U.S. competitiveness, and enhances national security, and pointed to evidence in the record they were submitting in support of these claims.

The Director's analysis of the third prong under the *Dhanasar* framework contains similar deficiencies. 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. Here, as noted by the Petitioner on appeal, the Director did not acknowledge or analyze the evidence submitted by the Petitioner regarding eligibility under the third prong. Rather, the Director reached a conclusory determination that "the provided evidence is deficient." As such, in addition to containing factual errors, the Director's denial notice did not afford the Petitioner a reasonable opportunity to provide specific responses on appeal to potentially overcome the basis of denial.

Therefore, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision. On remand, the Director should review the entire record, including the documentation submitted in support of the instant appeal, to determine whether the Petitioner has established that the Beneficiary is eligible for the benefit sought pursuant to 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.