U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37316162

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer in the sports management industry, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Form I-140, Immigrant Petition for Alien Workers (Form I-140), concluding that the record did not establish that the Petitioner submitted a properly completed Form I-140, submitted properly completed Department of Labor (DOL) forms, or met any of the national interest waiver requirements. 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). 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 dismiss the appeal.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are 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 they merit a discretionary waiver of the job offer requirement "in the national interest." 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:

[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).

- 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. ANALYSIS

The Director's decision had several reasons for denial. First, the Director mentioned that the Form I-140 initally submitted was not completed in Part 6 for job title and nontechnical job description, a non-existent SOC code was listed in Part 6, and the Schedule A group I and II designations in Part 2 were incorrectly marked. The Director issued a request for evidence (RFE) asking for a properly completed Form I-140 and the Petitioner did not submit one. Therefore, the Director found that the Petitioner did not submit a properly completed Form I-140. Second, the Director found that at the time of filing and in response to the RFE, the Petitioner did not submit a properly completed DOL Form ETA 750 Part B, Application for Alien Employment Certification; DOL ETA Form 9089, Application for Permanent Employment Certification, Parts J, K, and L; or the current DOL Form ETA-9089, Appendix A: Foreign Worker Information, Form ETA-9089 Final Determination: Permanent Labor Certification Approval (page 2), and any other appropriate appendices. As such, the Director denied the Form I-140 for not submitting this required evidence. Third, while the Director found that the Petitioner qualified as an advanced degree professional, the Director also concluded that he did not establish that he met any of the three national interest waiver requirements.

On appeal, the Petitioner submits a brief along with the documents he submitted with his Form I-140 and in response to the RFE. The Petitioner did not address the Director's finding that he did not submit the relevant DOL documents. A national interest waiver must include Form ETA 750B, Statement of Qualifications of Alien. *See* 8 C.F.R. § 204.5(k)(4)(ii). We note that this form is no longer used and USCIS currently requires that Form ETA-9089, Appendix A: Foreign Worker Information, and Form ETA-9089, Final Determination: Permanent Labor Certification Approval, be submitted in place of it. *See* Permanent Workers: Labor Certification, https://www.uscis.gov/working-in-the-united-states/permanent-workers. A review of the record reflects that the Petitioner submitted Form ETA-9089, Final Determination: Permanent Labor Certification Approval, with his Form I-140. However, the record does not establish that he submitted Form ETA-9089, Appendix A: Foreign Worker Information, as required. Therefore, we uphold the Director's denial for not submitting the required DOL forms. We reserve our opinion regarding the missing information on the Form I-140 and whether the Petitioner satisfies the national interest waiver requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976)(per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.