U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30371534

Date: MAR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a chemical 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 record did not establish that the Petitioner 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 dismiss the appeal.

I. LAW

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).

II. NATIONAL INTEREST WAIVER

The Petitioner's proposed endeavor is to serve as a consultant to small and medium sized American companies in the cosmetic industry. She will offer them advice in the chemical formulation of cosmetics for skin and hair through specialized methodologies and concepts of the cosmetic industry.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination relating only to the national importance requirements under *Dhanasar's* first prong with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Martinez-Lopez v. Barr*, 943 F.3d 766, 769 (5th Cir. 2019) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner's counsel includes arguments in the appeal brief that do not appear to apply to this case. It is unclear whether counsel relies on this as a template for several filings or whether it might have mistakenly been included in the brief. It does not appear Petitioner's counsel mistakenly included the content because some of the irrelevant arguments do include information pertaining to this Petitioner. The brief discusses the first prong requirements then indicates the Director's decision "contains instances of a misunderstanding and misapplication of law that goes beyond harmless error and reach the levels of abuse of discretion." The brief delineates between two scenarios: the submission of no evidence versus the submission of insufficient evidence. Here, the Petitioner implies that the Director's analysis in the denial fell under the scenario in which no evidence was submitted to demonstrate the national importance of the proposed endeavor.

The Petitioner argues she was placed at a disadvantage because the Director did not provide any meaningful review for the evidence she submitted. The Petitioner observes in prior cases, federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence in a filing amounts to critical error in the adjudicative process. In support of this concept, the Petitioner cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mich. 1994). The *Buletini* court opinion referred to the Director's failure to consider all the forms of evidence that the petitioner in that case submitted such as the book and the medical dictionary he authored, and his study that appeared in the largest circulation newspaper in that petitioner's home nation. *Buletini*, 860 F. Supp. at 1232–33. These are *forms* of evidence the *Buletini* court determined that the USCIS director had failed to consider; the court did not indicate that director was required to discuss each and every piece of evidence within the record.

We note that in the appeal before us, the Director provided adequate analysis of the case. Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence she considers as salient to qualifying under this program, she has not established how those omitted documents demonstrated eligibility. In other words, the Petitioner did not demonstrate that the

Director's failure to discuss every document in detail changed the outcome of the case. And that is the Petitioner's burden. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *see also United States v. Teixeira*, 62 F.4th 10, 25 (1st Cir. 2023) (concluding a trier of fact "need not articulate its conclusions as to every jot and tittle of evidence in making a determination").

Further, it is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *Amin*, 24 F.4th at 394. While we agree that the Director did not discuss every form of evidence she presented, the Petitioner doesn't establish through her appeal brief that these materials are sufficient to demonstrate her proposed endeavor has national importance. As the Petitioner has not demonstrated she was prejudiced by the lack of discussion of any evidence, even if we agreed that this was an error, such a lapse would appear to be harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

We also note that the Director provided conflicting determinations of whether the Petitioner was well positioned to advance the proposed endeavor under *Dhanasar's* second prong. *Compare* the Director's denial page 4 finding in the Petitioner's favor, with page 6 reflecting an adverse determination. However, as we explain above, *Dhanasar's* second and third prongs require the Petitioner to demonstrate she is eligible for an NIW meeting additional requirements. But because the Petitioner has not established that her proposed endeavor satisfies the first prong of the *Dhanasar* framework, she is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.