U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31108887

Date: MAY 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an associate professor/researcher, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, he 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. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To establish eligibility for a national interest waiver, 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration

Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

II. ANALYSIS

The Petitioner seeks to advance research in educational administration and policy, with a specific focus on exploring the relationships between teacher performance and student success. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

However, we cannot meaningfully review the portion of the Director's decision that analyzed *Dhanasar's* three prongs. Because it contains two sections that each separately analyze the "national importance" component of *Dhanasar's* first prong and then discusses *Dhanasar's* third prong in an unusual location, the decision's overall structure is confusing and difficult to follow. Moreover, neither "national importance" discussion contains meaningful detail. The Director's discussion of *Dhanasar's* second prong—whether the Petitioner is well-positioned to advance the proposed endeavor—is similarly problematic. The Director first notified the Petitioner in the request for additional evidence (RFE) that they had concluded the Petitioner is well-positioned to advance the proposed endeavor, only to retract that finding in the final decision, thereby denying the Petitioner a chance to cure the record. And the portion of the Director's decision analyzing *Dhanasar's* third prong—the so-called "balancing test"—contains no meaningful analysis for us to review. These factors collectively compel us to withdraw the Director's decision and remand the matter for additional action.

A. The Proposed Endeavor's Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor the noncitizen 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.

The Director issued an RFE requesting, among other things, further evidence of how the proposed endeavor would be of national importance. In the RFE, the Director determined that the proposed endeavor has substantial merit, and that the Petitioner was well positioned to advance his endeavor.

In response to the RFE, the Petitioner provided an updated statement, journals, industry reports and articles, Google Scholar profile, and documentation of articles that cited to his research findings. The Director found that while the Petitioner's endeavor had substantial merit, the Petitioner did not

[1] *See also 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 to be discretionary in nature).

establish the proposed endeavor is of national importance. In the decision denying the appeal, the Director concluded that the Petitioner has not shown sufficient evidence to establish that he is well positioned to advance the proposed, and that, on balance, it would benefit the United States to waive the job offer requirement.

On appeal, the Petitioner argues that the Director erroneously denied the petition and failed to fully adjudicate the case in accordance with *Dhanasar* and other USCIS policy. We agree. The Director's decision did not meaningfully analyze the proposed endeavor's national importance or adequately discuss the Petitioner's evidence. 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).

On remand, the Director should provide a full and complete analysis of whether the Petitioner's proposed endeavor is of national importance. If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar*'s first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

In the decision denying the petition, the Director concluded that the Petitioner has not "shown that his experience and education alone are sufficient to establish that he is well positioned to advance the proposed endeavor." The Director further noted that "the expert opinion letter was insufficient to demonstrate that the petitioner was well positioned to advance the proposed endeavor" after initially stating that the Petitioner was well positioned to advance the proposed endeavor in the RFE. On remand, the Director should review and evaluate the record to determine whether the Petitioner is indeed well positioned to advance his proposed endeavor. *See id.*

C. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that

other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

The Director concluded that the Petitioner did not 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. However, the Director provided little analysis or insight into that decision. On remand, if the Director concludes that the Petitioner does not meet *Dhanasar*'s third prong, the decision should address the Petitioner's arguments and evidence. *See id.*

III. CONCLUSION

For the reasons outlined above, we are withdrawing the Director's decision and remanding the matter so that the Director may determine whether the Petitioner has established eligibility for a national interest waiver as a matter of discretion. The Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director may request any additional evidence considered pertinent to the new determination and we express no opinion regarding this matter's ultimate disposition.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.