U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 310748444

Date: MAY 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chaplain, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/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 petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[4] 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.

II. ANALYSIS

The Petitioner states that he has more than 10 years of involvement with the Christian church, including as a minister, church administrator, pastoral educator, and youth mentor. He states that his proposed endeavor is to serve as a chaplain providing "a holistic approach to health through the provision of spiritual care and promotion of healthy lifestyle." He states that he will partner with the healthcare system and/or U.S. military to provide his services as a chaplain and spiritual caregiver.

Following initial review, the Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the requested EB-2 classification and for the national interest waiver. The RFE noted that the Petitioner had not established his eligibility for classification as an advanced degree professional or an individual with exceptional ability, or any of the three prongs of the *Dhanasar* framework.

In response to the RFE the Petitioner submitted evidence of his education and experience, certificates of achievement and recognition, recommendation and support letters, and evidence of publications and presentations. He also submitted a cover letter outlining his proposed endeavor and eligibility for a national interest waiver.

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *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).

After reviewing the Petitioner's response to the RFE, the Director determined that the Petitioner did not establish that his proposed endeavor has substantial merit and national importance, that he is well-positioned to advance his proposed endeavor, or that on balance, waiving the job offer requirement would benefit the United States. The Director did not make a determination on whether the Petitioner was eligible for the requested EB-2 classification as either an advanced degree professional or an individual of exceptional ability.

On appeal, the Petitioner asserts that the Director made several errors in this matter, including errors of fact, law and policy. The Petitioner further asserts that the Director did not provide an analysis of the evidence in the record or describe its deficiencies.

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification. Here, the Director's decision is deficient in that it did not make an initial determination regarding the Petitioner's eligibility in this threshold first step. The Director does not discuss or analyze evidence in the record submitted to establish that the Petitioner is an advanced degree professional.[5] Regarding whether the Petitioner is an individual of exceptional ability, the Director states that the Petitioner has established that he meets all six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[6] However, the Director does not provide any discussion or analysis of a final merits determination to conclude whether, in its totality, the Petitioner has demonstrated that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

On remand, the Director should determine whether the Petitioner has established that he is an advanced degree professional consistent with the regulations at 8 C.F.R. § 204.5(k)(2). If not, the Director should then conduct a final merits determination to conclude whether the Petitioner has achieved a level of expertise significantly above that ordinarily encountered in chaplaincy as required to qualify as an individual of exceptional ability.

B. National Interest Waiver

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual 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. *Matter of Dhanasar*, 26 I&N Dec. at 889. Here, the Director does not discuss or make any determination regarding the substantial merit of the Petitioner's proposed endeavor.

In addressing each prong of the framework under *Matter of Dhanasar*, the Director's decision lists the potential factors to be considered but does not meaningfully apply these factors to the Petitioner's evidence or explain why the evidence was insufficient to establish eligibility under each prong. The

[5] The record includes a copy of a U.S. master of arts degree in Christian education and academic transcripts issued to the Petitioner in 2020.

[6] We note that, in the decision, the Director incorrectly states that the Petitioner seeks classification as an individual of exceptional ability as an "Airline Pilot."

Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Director did not adequately explain how the evidence in the record led to the determination that the Petitioner did not establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest.

In discussing the national importance of the Petitioner's proposed endeavor, the Director states that the Petitioner "has not substantiated how his specific work in the field of spiritual care can positively impact the U.S. economy." However, "merit may be established without immediate or quantifiable economic impact." *Matter of Dhanasar*, 26 I&N Dec. at 892. *See also* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual. The Director does not discuss the Petitioner's description of his proposed endeavor in any detail, or address whether it has the significant potential to broadly enhance societal welfare, rising to the level of national importance.

In her decision addressing the second *Dhanasar* prong, the Director acknowledged the Petitioner's education, publications and support letters. She then states, "USCIS cannot conclude his professional activities reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar's* second prong." However, the Director does not provide a discussion of the Petitioner's evidence in the record, including evidence that he has the support of a foundation that provides grants for philanthropic work, or his correspondence with a chaplain recruiter for the U.S. Army.

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.

In addressing the third *Dhanasar* prong, the Director states that, "based on the above-discussed documentary evidence, the Petitioner has not established that it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification." However, the decision does not discuss the documentary evidence in the record, including the Petitioner's cover letter, evidence of his interest in a chaplain residency program through a hospital, or evidence of his correspondence with a chaplain recruiter for the U.S. Army. The Director's decision lists the potential factors to be considered but does not apply any factors to the Petitioner's evidence or explain why the evidence did not demonstrate the benefits of a waiver of the job offer, and thus of a labor certification.

As noted above, the Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Director did not adequately explain how the evidence in the record led to the determination that the Petitioner did not establish that his proposed endeavor has substantial merit and national importance, that he is well-positioned to advance his proposed endeavor or that, on balance, waiving the job offer requirement would benefit the United States. The lack of detail in the denial did

not give the Petitioner a sufficient opportunity to prepare a substantive appeal. Therefore, we will withdraw the Director's decision and remand the matter for further consideration.

If appropriate, on remand the Director may issue a Request for Evidence or Notice of Intent to Deny. The Director must then issue a new decision, addressing all the relevant evidence to decide the merits of the Petitioner's claim of eligibility for a national interest waiver.

III. CONCLUSION

In concluding that the Petitioner submitted insufficient evidence to establish that a waiver of the classification's job offer requirement, and thus of the labor certification, would be in the national interest, the Director did not provide sufficient detail to explain the reasons for denial as required by 8 C.F.R. § 103.3(a)(1)(i).

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