U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31145471

Date: MAY 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a licensed airline transport pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. *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 under section 203(b)(2)(B)(i) of the Act.

The Director of the Texas Service Center denied the petition, concluding that, although the Petitioner demonstrated his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not establish that a waiver of the classification's job offer requirement 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). 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 because the Director's decision is insufficient for review. The decision contains several factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. *See* section 203(b)(2)(B)(i) of the Act. The Director determined that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree.

If 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 USCIS may, as matter of discretion, 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.

In applying the *Dhanasar* framework, the Director determined that the Petitioner established the substantial merit of his 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 contains erroneous conclusions of law and fact and does not explain why the evidence submitted was insufficient to establish his eligibility for the requested national interest waiver. The Petitioner maintains that most of the evidence in the record was "misquoted, mischaracterized, misrepresented or overlooked."

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 does not properly analyze the evidence submitted and therefore does not sufficiently explain the reasons for denial.

In describing the Petitioner's proposed endeavor, the Director's decision states that the Petitioner plans to "to work as a project manager in the IT consulting field, operating his own company [redacted] The record reflects that the Petitioner, a licensed airline pilot, did not make the statements attributed to him by the Director and never indicated an intent to operate his own company or to work in the IT field. Further, the Director's summary of the evidence provided by the Petitioner in response to a request for evidence (RFE) is inaccurate, as it lists documents that are not included in the record of proceeding and were not referenced in the RFE response. These errors raise questions as to whether the Director's analysis was based solely on the evidence submitted in support of this petition.

While the decision elsewhere acknowledges that the Petitioner's proposed endeavor is in the aviation field, it does not reflect consideration of the more detailed explanation of the proposed endeavor provided in response to the RFE, and the Petitioner's evidence and arguments pertaining to the national importance of the proposed endeavor. The Director's determination that the Petitioner did not establish the national importance of his proposed endeavor rests largely on a conclusion that he did not establish the significant potential to employ U.S. workers or other substantial positive economic effects consistent with national importance. However, the Petitioner also articulated claims that his proposed endeavor would impact a matter that is the subject of federal government initiatives, advance a critical emerging area of STEM, have national implications in the broader aviation field, and would ultimately enhance societal welfare, and pointed to evidence in the record he was submitting in support of these claims.

These claims are relevant in evaluating whether a potential prospective impact of the Petitioner's work under the *Dhanasar* framework and should have been weighed as part of the first prong analysis. In fact, the Director had specifically instructed the Petitioner to address such factors in his response to the RFE, but then failed to give those claims due consideration. While the evidence of record may be insufficient to demonstrate the national importance of the proposed endeavor, the Director's determination that the Petitioner did not satisfy the first prong was largely conclusory, did not adequately describe the proposed endeavor, did not adequately address the evidence and arguments submitted, and therefore did not sufficiently explain the reasons for denial.

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, the Director did not sufficiently identify or discuss the evidence they weighed in balancing those considerations or meaningfully address the Petitioner's specific claims regarding his eligibility under the third prong. Rather, the Director reached a conclusory determination that the Petitioner did not demonstrate that "the proposed endeavor benefits would be beneficial to the United States." 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 Petitioner's response to the RFE and the appeal, to determine whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director should consider the Petitioner's evidence and arguments provided in support of each prong and provide an analysis of that evidence to support the conclusions reached.

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