U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31111087

Date: MAY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the nutrition and wellness consulting industry, 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 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 record did not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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 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. A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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

A. EB-2 Classification

The Petitioner claims eligibility for EB-2 classification as a member of the professions holding an advanced degree and states that USCIS made an error in denying her EB-2 classification. However, the Director does not fully address the Petitioner's EB-2 eligibility. The Director notes that the Petitioner has not established that she qualifies for the requested classification but there is no analysis of the documents the Petitioner submitted or explanation as to why the Petitioner does not qualify. On remand, the Director should evaluate the Petitioner's evidence, determine if she meets the criteria for eligibility, and explain the basis of the conclusion.

B. National Interest Waiver

The Petitioner's proposed endeavor is to open a nutritional and wellness consulting and counseling business in [redacted] Florida with the intention of offering her services throughout the United States. The Director determined the Petitioner's proposed endeavor has substantial merit but did not meet the national importance requirement of *Dhanasar*'s first prong. Additionally, the Director concluded she did not meet prong two or three of the *Dhanasar* framework.

However, the Director's determination was made without explanation or analysis. The Director presented the relevant law and generally listed some of the evidence in the record but did not analyze the documents or sufficiently explain why the evidence did not establish eligibility under the *Dhanasar* framework. For example, under a subsection titled "National Importance," the Director stated "[t]o evaluate whether the petitioner's work satisfies the national importance requirement, the evidence documenting the 'potential prospective impact' of [her] work is reviewed." Then the Director quoted from *Dhanasar* that the focus is "on the specific endeavor that the foreign national proposes to undertake" and not the importance of the fields or industries, but the Director did not explain why the record does not establish national importance. Similarly, in discussing the second prong of *Dhanasar*, the Director stated, "the [P]etitioner maintains that her education and work experience demonstrate that she is well positioned to advance her proposed endeavor" and noted that USCIS provided an opportunity to provide additional evidence. The Director immediately followed this with a conclusion,

[1] *See 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 is discretionary in nature).

"[a]s such, she has not shown that her experience and education alone are sufficient to establish that she is well-positioned to advance the proposed endeavor," but did not explain how she made that conclusion.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, a decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, the decision did not meet these requirements.

III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and first determine whether she has established eligibility for the underlying EB-2 classification as a member of the professions holding an advanced degree, and if so, determine whether she establishes eligibility under the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

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