U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34812679

Date: November 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a sales operations manager, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or as an individual of exceptional ability, as well as a discretionary national interest waiver of the job offer requirement attached to this classification. 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 qualifies for the EB-2 classification as an advanced degree professional, and did not provide any other findings or address whether he warrants a national interest waiver. The Director then also denied his subsequent combined motion to reopen and reconsider because the motion assertions and documents still did not show he is an advanced degree professional or otherwise satisfy the motion requirements. 8 C.F.R. § 103.5(a)(2), (3). This matter is before us on appeal, which we review de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). The Petitioner has the burden of establishing his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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.

To be eligible for a national interest waiver, a petitioner must first establish eligibility for the underlying EB-2 visa classification, as an advanced degree professional *or* an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A), (B) of the Act; 8 C.F.R. § 204.5(k)(1).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they warrant a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions, which states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner establishes that: (1) the proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer and thus labor certification requirements would benefit the United States. *Id.*

[1] *See, e.g.*, *Brasil v. DHS*, 28 F.4th 1189 (11th Cir. 2022) (concluding that the national interest waiver determination is nonreviewable and discretionary in nature).

The record reflects that, in addition to seeking EB-2 classification as an advanced degree professional, the Petitioner also explicitly sought this underlying classification, as he may alternatively, as an individual of exceptional ability, which requires him to first satisfy at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and then demonstrate, under a final merits evaluation, that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2) (defining "exceptional ability"); 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (discussing a two-part framework for determining exceptional ability). The Petitioner provided below detailed assertions and specific documentary evidence for his EB-2 classification request based on exceptional ability as well as documents in support of his claim that he also warrants a discretionary national interest waiver under the *Dhanasar* framework and its requisite three prongs.

The Director, however, denied the petition solely based on a finding that the evidence did not establish that he is a member of the professions holding an advanced degree, 8 C.F.R. § 204.5(k)(1), (3)(i)(B), without addressing his claimed EB-2 classification eligibility based on exceptional ability or reaching the merits of his national interest waiver. The Petitioner, in his subsequent combined motions to the Director, again specifically explained that he is primarily seeking EB-2 classification based on exceptional ability *and* submitted related documents for this classification as well as for a *Dhanasar* evaluation of his waiver petition—assertions and evidence, which were left unaddressed in the denial. But the Director nonetheless denied the combined motions simply because the motion documents and assertions still did not overcome the finding contained in the previous denial on the issue of advanced degree and because he did not show any legal or policy error in the prior denial that would warrant reconsideration. On appeal, the Petitioner again avers that the record evidence establishes that he qualifies for the underlying EB-2 classification as an individual of exceptional ability and also satisfies all three *Dhanasar* prongs, as he repeatedly asserted below, and again submits related documents.

The Director's adverse decisions do not reflect a sufficient consideration of the Petitioner's eligibility claims and related documents he presented below, as they did not address or even mention his assertions and evidence pertaining to his claimed eligibility for the EB-2 classification based on exceptional ability, which may further affect his eligibility for a discretionary national interest waiver. *See, e.g.*, *Matter of A-P-*, 22 I&N Dec. 468, 474, 478 (BIA 1999) (holding that an adjudicator's decision should reflect "the substantive completeness of the decision" and *must* accurately summarize the relevant facts, reflect analysis of the applicable statutes, regulations, and legal procedures, and clearly set forth legal conclusions); *see also* 8 C.F.R. § 103.3(a)(1)(i) (stating that when denying a benefit, the Director *shall* explain the specific reasons for denial).

We will therefore withdraw the Director's decision and remand the matter for a new decision for further consideration and the entry of a new decision. On remand, the Director should review the entire record, including the appeal documents, and determine whether the Petitioner has established his eligibility for the underlying EB-2 classification based on exceptional ability, and whether, in the Director's discretion, he warrants a national interest waiver under the *Dhanasar* framework.

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