U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34828004

Date: NOV. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks second preference 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 EB-2 immigrant 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 though the Petitioner qualified for classification as a member of the professions holding an advanced degree, she did not establish 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 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.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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

[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).

- On balance, waiving the job offer requirement would benefit the United States.

Id.

The Petitioner indicates on appeal that her proposed endeavor is to work as an entrepreneur and expand her current business in the food and beverage industry. She contends that the record, including documentation submitted with the initial filing and in response to the Director's two requests for evidence, establishes eligibility for a national interest waiver. The Petitioner asserts that the denial did not list the submitted evidence, address its contents, discuss the applicability of the relevant law to the evidence, or explain the specific reasons for the denial.

We agree. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). 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 a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the decision did not meet these requirements. The decision's lack of any substantive analysis prevented the Petitioner from filing an appeal that meaningfully addressed it. Consequently, we hereby withdraw the Director's decision and remand the matter so that the Director may issue a new decision that considers the Petitioner's evidence.

On remand, the Director should consider the evidence of record and articulate whether that evidence establishes the Petitioner's eligibility for the benefit she seeks. If the Director concludes that the Petitioner's documentation does not meet the requirements of a specific eligibility criterion, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility. Therefore, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. 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.