U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34811954

Date: NOV. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary as either a member of the professions holding an advanced degree 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 record did not establish that the Beneficiary merits a discretionary waiver of the job offer requirement in the national interest. The Director dismissed a subsequently filed motion to reopen. The Petitioner now appeals the Director's dismissal of the motion to reopen pursuant to 8 C.F.R. §§ 103.3 and 103.5(a)(6).

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 dismiss the appeal.

I. LAW

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.

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

Id.

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence.[2] 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we emphasize that the appeal before us relates to the Director's April 2024 dismissal of the Petitioner's motion to reopen, not the August 2022 denial.[3] Therefore, the question before us is whether the Director erred in dismissing the motion. Although the August 2022 denial is not the basis of the appeal, we will refer to portions of that decision because it informs our de novo review of the dismissal of the Petitioner's motion to reopen.

In their August 2022 denial, the Director concluded that the Petitioner did not establish eligibility for a national interest waiver under the *Dhanasar* analytical framework. *See Matter of Dhanasar*, 26 I&N Dec. at 889. Specifically, the Director concluded that the Petitioner did not consistently describe the Beneficiary's proposed endeavor throughout the record. The Petitioner initially claimed that the Beneficiary would be employed as president of its trucking company. In response to the Director's request for evidence (RFE), the Petitioner stated that its trucking company would provide moving services to victims of domestic violence, but also indicated that the Beneficiary intended to establish a small free dental clinic. Nonetheless, the Director determined that the Petitioner had not shown that the proposed endeavor would result in broader implications to the field beyond the direct benefits to its prospective customers or otherwise result in substantial economic benefits contemplated in *Dhanasar*. And, while the Director acknowledged the Petitioner's submission of the Beneficiary's educational documents, the Director questioned the authenticity of the evidence, but because the Petitioner had not established eligibility for a national interest waiver, the Director did not make a determination regarding the Beneficiary's eligibility for EB-2 immigrant classification.

As stated, following the denial of their petition, the Petitioner filed a motion to reopen. On motion, the Petitioner submitted copies of the Beneficiary's educational documents as well as evidence relating to his training and experience in dentistry and orthodontics, and reiterated the Beneficiary's intention to

[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).
[2] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).
[3] 8 CFR §103.5(a)(6).

partner with local shelters to offer moving services to victims of domestic violence. In addition, the Petitioner explained that the company would require its staff to complete background checks as well as trauma training to provide services to victims of domestic violence. Upon review, the Director determined that the new evidence did not overcome the basis for denial, and accordingly did not meet the requirements of a motion to reopen.

On appeal, the Petitioner submits new evidence relating to the Beneficiary's education, training, and experience, but does not address the Director's conclusions that the Petitioner did not establish how the Beneficiary's work would result in broader implications to the field beyond the impact to prospective customers. In doing so, the Petitioner fails to specifically identify an erroneous conclusion of law or statement of fact in the Director's most recent decision dismissing the motions, which is the decision on appeal. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). It is insufficient to broadly assert that the Director made an improper determination. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986). As the Petitioner does not contest the Director's most recent decision, this alone is a basis for dismissal.

Nonetheless, upon de novo review, we conclude that the Director properly dismissed the motion to reopen. In their appellate brief, the Petitioner reiterates the same statements made in their motion to reopen, and while we acknowledge the importance of protecting victims of domestic violence, as explained in the Director's initial decision, this relates to the substantial merit of the endeavor, but does not establish its national importance. When evaluating the national importance of a proposed endeavor, the industry or customer base a petitioner or beneficiary will serve alone is not sufficient to establish national importance, instead we focus on the broader implications of "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. The Petitioner has not shown the broader implications of the Beneficiary's proposed endeavor, however admirable, rise to the level of national importance contemplated in *Dhanasar*.

Because the Petitioner's motion to reopen did not contain new facts supported by affidavits or other documentary evidence overcoming the Director's decision and establishing his eligibility for the national interest waiver, the Director properly dismissed his motion to reopen. *See* 8 C.F.R. § 103.5(a)(4).

III. CONCLUSION

For the reasons above, the Petitioner has not shown that the Director erred in dismissing the motion to reopen.

ORDER: The appeal is dismissed.