U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33944230

Date: NOV. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher, 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 EB-2 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 Petitioner qualified for the EB-2 classification as a member of the professions holding an advanced degree, but that he had not established 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. 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. Section 203(b)(2)(B)(i) of the Act. 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.

We set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver of the job offer, and thus the labor certification, to a petitioner classified in the EB-2 category if the petitioner demonstrates that (1) the noncitizen's proposed endeavor has both substantial merit and national

[1] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

importance; (2) the noncitizen is well positioned to advance the proposed endeavor; and (3) 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.

II. ANALYSIS

The Petitioner proposes to work in the United States as a researcher. The Director found that the Petitioner qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. The Proposed Endeavor's Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the noncitizen proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

In denying the petition, the Director determined that the Petitioner's proposed endeavor has substantial merit. The Director determined, however, that the Petitioner did not establish the proposed endeavor's national importance, that he is well positioned to advanced it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner argues that the Director failed to correctly identify and adequately assess the proposed endeavor. Upon review, we agree with the Petitioner.

The Petitioner states that his proposed endeavor is to continue his research in developing "state-of-the-art methods for the construction and design of new substrates and materials for high-performance solar cells in order to improve renewable energy technology and create advanced nanomaterials." According to his resume, the Petitioner holds a Ph.D. in inorganic chemistry from [redacted] in Iran. In support of his petition, the Petitioner submitted his curriculum vitae, academic records, recommendation letters, as well as evidence of his peer-reviewed journals and publications along with related citations.

In evaluating *Dhanasar*'s first prong, the Director concluded that while the Petitioner demonstrated the proposed endeavor's substantial merit, he failed to establish its national importance. In the request for evidence, the Director stated that the Petitioner intends to work as a researcher in the field of inorganic chemistry. In the decision, the Director once again described the Petitioner's proposed endeavor as seeking to work as a researcher in the field of inorganic chemistry. After listing the submitted documents and without a meaningful analysis of the evidence, the Director concluded that the Petitioner failed to demonstrate the proposed endeavor's national importance. We, therefore, conclude that the Director erred by not considering the Petitioner's evidence as submitted in the record. An officer must fully explain the reasons for denying the application in order to allow the Petitioner a fair opportunity to contest the decision and to afford us an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

On remand, the Director should provide a full and complete analysis of the Petitioner's specific proposed endeavor and determine whether it is of national importance. If the Director concludes that the Petitioner's specific proposed endeavor does not meet the substantial merit or national importance requirements of *Dhanasar*'s first prong, the decision should adequately explain the reasons for ineligibility.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the noncitizen. To determine whether the noncitizen is well positioned to advance the proposed endeavor, we consider factors including but not limited to the individual's education, skills, knowledge, and record of success in related or similar efforts. A model or plan for future activities, progress towards achieving the proposed endeavor, and the interest of potential customers, users, investors, or other relevant entities or individuals are also key considerations.

In the decision denying the petition, the Director concluded that the Petitioner was not well positioned to advance the proposed endeavor. On remand, the Director should review and evaluate the record to determine whether the Petitioner is well positioned to advance his specific proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires the petitioner to demonstrate that, on balance of applicable factors, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. USCIS may evaluate factors such as whether, in light of the nature of the noncitizen's qualification or the proposed endeavor, it would be impractical either for the noncitizen to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the noncitizen's contributions; and whether the national interest in the noncitizen's contributions is sufficiently urgent to warrant forgoing the labor certification process. Each of the factors considered must, taken together, indicate 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.

The Director concluded that the record did not demonstrate "the widespread benefits associated with" the Petitioner's proposed endeavor of working as a researcher in inorganic chemistry. On remand, the Director should re-evaluate the Petitioner's claims and evidence under the third prong of the *Dhanasar* framework, considering the revised analysis of the first two prongs as discussed above.

III. CONCLUSION

For the reasons outlined above, we are withdrawing the Director's decision and remanding the matter so that the Director may determine whether the Petitioner has established eligibility for a national interest waiver as a matter of discretion. The Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Director

may request any additional evidence considered pertinent to the new determination and we express no opinion regarding this matter's ultimate disposition.

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