U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33389484

Date: OCT. 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes himself as "an expert in human capital formation," 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 initially granted the petition based on the Petitioner's claim that he was an advanced degree professional and would execute his proposed endeavor through a nonprofit organization he had created in [redacted] Texas. The Director later issued a notice of intent to revoke (NOIR) notifying the Petitioner that the U.S. Department of State (DOS) returned the Form I-140 to U.S. Citizenship and Immigration Services (USCIS) because an investigation was unable to verify his past work experience and "found no evidence of a functioning non-profit organization operating within the [redacted] area owned by the petitioner/beneficiary" or his family members. Following the Petitioner's response to the NOIR, the Director revoked approval of the petition and dismissed a subsequent motion to reconsider. 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 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 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.

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The regulation provides that "if, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for revocation." 8 C.F.R. § 205.2(c). Because the Director did not fully explain the specific reasons for revoking the approved petition in this case, we will remand the matter to the Director for further proceedings.

[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).

The Petitioner submitted evidence that he has a doctoral degree in Political and Social Sciences and Communication from the [redacted] in Belgium. Accordingly, the record supports the Director's conclusion that the Petitioner has an advanced degree per the requirements of 8 C.F.R. § 204.5(k)(2).

The Petitioner's proposed endeavor is "[t]o attract more American students to STEM [science, technology, engineering, and math] fields and bridge the gender gap in these fields through the non-profit organization he has already established in the U.S." He explains that his area of expertise, human capital formation, "is concerned with developing important abilities and skills among populations of people in order to support their growth and wellbeing." The nonprofit through which he intends to conduct his work is called the [redacted]

In his business plan supporting his initial filing, the Petitioner indicated that he had established [redacted] as a tax-exempt nonprofit organization in Texas in 2019 and had acted as "the driving force behind the conceptualization of [redacted] and initial steps toward launch." He discussed future plans for his work through [redacted] explaining that the organization would conduct research, monitor the gender gap in STEM fields, organize conferences and workshops, provide coaching and tutoring to students, and do other work to promote and support education and work in STEM fields. In his accompanying personal statement, the Petitioner stated that he "intend[s] to work through the nonprofit organization [he] established . . . in order to attract more American students to STEM fields and bridge the gender gap in these fields." The Director approved the petition and the Petitioner appeared at the U.S. Embassy in Brussels, Belgium for an immigrant visa interview. Based on the interview responses and derogatory information, the Embassy returned the petition to the Director and recommended revocation. The Director issued a NOIR and informed the Petitioner of the following:

> The Department of State (DOS) returned Form I-140 to USCIS because it appeared that the beneficiary was not eligible for the requested benefit. The petitioner/beneficiary stated that he was an entrepreneur with an annual income of $60,000 and would be an "Executive Director" at a yet-to-be determined work site in the U.S. The petitioner/beneficiary claimed at his Department of State interview, that he created and had been the principal agent or acted as the board for at least five registered non-profit organizations in the U.S. since 2009, including the most recent one, [redacted] which was most of the basis for the Form I-140 petition. Based on research at the Department of State, little information exists for either organization apart from information of incorporation.

The Director further explained that investigators found no evidence that [redacted] or any other nonprofit organization linked with the Petitioner or his family was functioning in the [redacted] Texas area as claimed, and all associated addresses were no longer occupied by the Petitioner or his family members. Investigators interviewed the Petitioner's adult son, whom the Petitioner claims is a Director of [redacted] and he was unable to provide documents or details about the organization. Accordingly, the Director stated in the NOIR that "the following issues independently form the basis for this intended revocation . . . :"

> USCIS and the Department of State were not able to verif[y] any of the work experience claimed by the beneficiary and there is no evidence to demonstrate that the most recent entity [redacted] is functioning.

Additionally, the Director discussed the requirements for meeting each of the three prongs under *Matter of Dhanasar* and stated:

> According to the recently discovered evidence, it does not appear that the beneficiary meets any of the prongs since his past and current work could not be verified.

In his brief in response to the NOIR, the Petitioner noted that he had previously provided evidence of [redacted] tax exempt status as a 501(c)(3) organization and registration as a nonprofit organization with the State of Texas. He argued that the petition was "forward-looking" based on his proposed endeavor and that he had not claimed that [redacted] was already fully operational; in fact, his business plan discussed future plans for the organization because he is not yet physically present in the United States. The Petitioner submitted evidence that he signed agreements in 2022 and 2023 for [redacted] to provide a scholarship fund and other programs at [redacted] He also submitted documents relating to incorporation listing a new address for [redacted] an apartment lease for his adult children at that address, and a letter from a senator acknowledging the Petitioner's correspondence about STEM education. He also stated that the NOIR "refers to other past non-profit organizations, but does not name them or make any specific allegations as to any findings by DOS's investigation," so he was unable to respond about inconsistencies relating to nonprofits other than [redacted]

In revoking the approval of the petition, the Director acknowledged the Petitioner's documentation but stated that the evidence in response to the NOIR, which post-dated the NOIR and investigation, did not establish that [redacted] was functioning as claimed at the time of filing the petition. The Director noted that a petitioner must establish eligibility at the time of filing the petition and cannot make material changes after filing in order to correct a deficiency. Accordingly, the Director stated that "[n]one of these documents show this organization was operating before the I-140 was filed and up until now and they do not demonstrate the petitioner/beneficiary's claimed for past and current work." Further, the Director repeated conclusions from the NOIR that because his past and current work could not be verified, he did not meet the *Dhanasar* prongs or otherwise establish eligibility. In a subsequent decision dismissing the Petitioner's motion to reconsider, the Director stated that the Petitioner had not included a required statement about whether the validity of the of the unfavorable decision was the subject of any judicial proceeding and that his arguments on motion "are immaterial and do not change the outcome of" the prior decision.

On appeal, the Petitioner argues that the Director failed to consider his response to the NOIR and the arguments in his subsequent motion before the Director. He contends that he has submitted sufficient evidence to establish that [redacted] was "in existence and functioning" before he filed his petition, as demonstrated by a letter from the Internal Revenue Service (IRS) confirming [redacted] tax-exempt status as a 501(c)(3) charity, a letter from the Texas Office of the Secretary of State confirming [redacted] status as a nonprofit corporation, a Certificate of Filing from the Texas Office of Secretary of State, and two letters from the Texas Comptroller of Public Accounts providing [redacted] tax information and confirming its registration with the Texas Secretary of State. Further, he asserts that "even if [redacted] was not fully operational" by the time of filing, his petition was still approvable based on his proposed

endeavor, which relates to his future plans to achieve goals through [redacted] once he arrives in the United States. He states the "lack of information and evidence beyond incorporation" is "what would be expected of a non-profit organization set up and ready to begin operations but not yet able to do so because its President is not yet in the US." Regarding the Director's statement that DOS was unable to verify his past work experience because investigators found no evidence of a functioning nonprofit organization in the [redacted] area, he notes that most of his past work experience occurred outside of the United States. And he states that he submitted evidence that [redacted] address had been updated with the Texas state government.

In the NOIR, the Director stated an investigation conducted in the [redacted] area of Texas could not verify his claimed past work with nonprofit organizations there or that the nonprofit on which his proposed endeavor was based, [redacted] was currently operating. However, the Director did not explain how the lack of evidence regarding the Petitioner's past and current work with nonprofit organizations in Texas made him ineligible for EB-2 classification as an advanced degree professional. Furthermore, the Director did not provide specific information about nonprofit organizations in Texas other than [redacted] for which the evidence was inadequate, and the Petitioner was therefore unable to address this issue. Moreover, although the NOIR mentioned the three-prong *Dhanasar* analytical framework, the Director did not explain why the Petitioner did not meet the three prongs.[2] Instead, the Director generally stated that "[a]ccording to the recently discovered evidence, it does not appear that the beneficiary meets any of the prongs since his past and current work could not be verified." Here, the Director did not provide the Petitioner sufficient information that specifically explained the proposed grounds for revocation.

In the revocation and subsequent dismissal of the motion to reconsider, although the Director acknowledged the Petitioner's submission of documentation, the Director did not address the Petitioner's arguments in response to the NOIR regarding the change of address and that the petition was forward-looking. Moreover, while the Director again indicated that the Petitioner's past and current work experience could not be verified, they did not specify the organizations other than [redacted] that were found not to be operational, so the Petitioner was unable to meaningfully rebut this determination. And the Director did not explain how the inability to confirm past work experience in Texas or lack of evidence that [redacted] was currently operational was materially relevant to whether the Petitioner met the three prongs of *Dhanasar*'s analytical framework relating to his proposed endeavor.

III. CONCLUSION

The Director did not properly revoke the approved petition. The Director did not specifically identify the work experience that was of concern, nor did they explain how insufficient evidence regarding the Petitioner's past and current work with nonprofit organizations in Texas made him ineligible for EB-2 immigrant classification as an advanced degree professional and a related national interest waiver of the job offer requirement based on his proposed endeavor. Additionally, the revocation notice did not address some rebuttal claims the Petitioner provided in response to the NOIR. Further, the Director did not conduct a full *Dhanasar* analysis, discussing the evidence in the record and explaining how the Petitioner had not met the three prongs. We will therefore remand the matter to the Director to

[2] The Petitioner has filed two other petitions based on the same proposed endeavor, both of which the Director denied. We dismissed the appeal of one of those petitions because he did not meet the first prong of the *Dhanasar* framework.

issue a new NOIR covering these issues and also considering the additional arguments and evidence on appeal.

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