U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33959843

Date: SEP. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate he merits a discretionary waiver of the job offer requirement 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest."

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

Section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. 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,[2] 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.

II. ANALYSIS

The Director determined that the Petitioner established his eligibility for the underlying EB-2 classification as a member of the professions holding an advanced degree. However, the Director found that the Petitioner did not establish his eligibility under the second and third prongs of the Dhanasar analytical framework, and therefore found him ineligible for a waiver of the job offer requirement.

A. Member of Professions Holding an Advanced Degree

The Director's decision did not provide a basis for determining the Petitioner qualifies as a member of the professions holding an advanced degree. The Petitioner submitted his diploma, academic transcripts, an academic evaluation, recommendation letters, and his Brazilian business' corporate and financial documents. The record shows that the Petitioner earned a bachelor of electrical engineering from [redacted] in Brazil on April 10, 2013, which is the foreign equivalent of a U.S. bachelor's degree.

However, the Petitioner did not show that he has five years of progressive experience in his specialty. The Petitioner submitted recommendation letters from colleagues attesting to the Petitioner working with them on various electrical projects and his investment in a senior living project. Even though the letters name the year when the projects took place, the letters do not specify the dates of the Petitioner's work experience and his specific job duties to show five years of progressive experience in his specialty. Also, the corporate and financial documents relating to the Petitioner's businesses in Brazil do not show the Petitioner's job duties for these businesses and the specific dates he worked in his specialty. Without further evidence, the Petitioner has not established that he has five years of progressive experience in his specialty. See 8 C.F.R. § 204.5(k)(2). Therefore, we withdraw the Director's decision that the Petitioner qualifies as a member of the professions holding an advanced degree.

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

B. Substantial Merit and National Importance

The Director did not make a determination whether the Petitioner's proposed endeavor meets the first prong of the Dhanasar analytical framework. The first prong, substantial merit and national importance, focuses on the specific endeavor that a petitioner 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. Matter of Dhanasar, 26 I&N Dec. at 889.

The Director's decision identifies the Petitioner's proposed endeavor by stating that he "intends to work as an [e]lectrical [e]ngineer and [e]ntrepreneur" and provided the legal requirements for meeting Dhanasar*'s* first prong. However, the decision neither discusses the facts of the case nor indicates whether the Petitioner's proposed endeavor has substantial merit or is of national importance. Similar to the decision, a request for evidence (RFE) stated the legal requirements for meeting *Dhanasar's* first prong but did not discuss the facts of this case with those legal requirements. Moreover, the RFE did not state any insufficiencies in the Petitioner's evidence relating to the first prong.

On remand, the Director should analyze the evidence to determine whether the record sufficiently describes the proposed endeavor, and whether the endeavor has substantial merit and is of national importance. If the Director concludes that the Petitioner's documentation does not meet the substantial merit or national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

C. Well-Positioned to Advance the Proposed Endeavor

For the second prong, the focus shifts to the petitioner and their positioning to advance their proposed endeavor, and we look at several factors in making this determination. We consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. Id. at 890.

The Director determined that the Petitioner did not establish that he is well-positioned to advance the proposed endeavor. Although the decision identifies the Petitioner's submitted evidence and provides brief references to a few pieces of evidence, the Director does not sufficiently explain the basis for this determination. On appeal, the Petitioner argues that his previously provided evidence shows he is well-positioned to advance his proposed endeavor, specifically pointing to his academic credentials, training certificates, letters of recommendation from individuals in his field, his professional plan, documents relating to his businesses in Brazil, letters of intent to work with the Petitioner, and an opinion letter.

An officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(l)(i); see also Matter of M-P-, 20 I&N Dec. 786, 787-88 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not adequately address the evidence submitted with the petition or in the RFE response.

Accordingly, we withdraw the Director's determination that the Petitioner does not meet the second prong of the Dhanasar framework. On remand, any new determination by the Director should consider the evidence offered for prong two, including the Petitioner's academic record, certifications and trainings, letters of recommendation, his professional plan, documents relating to his Brazil businesses, letters of intent to work with the Petitioner, and the opinion letter. The Director should analyze the specific content of the record to determine if this documentation renders him well-positioned to advance the proposed endeavor. If the Director concludes that the Petitioner's documentation does not meet Dhanasar 's second prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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

As to the third prong of Dhanasar, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis and concluded that the Petitioner "has not established 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." However, while the Director's decision identifies the Petitioner's submitted evidence and provides a brief analysis of a few pieces of evidence, it does not sufficiently discuss the evidence weighed in balancing those considerations nor address the Petitioner's specific claims, if any, as to the third prong. Without a proper evaluation of the factors identified in Dhanasar 's third prong, we cannot meaningfully analyze whether the Director's determination for this prong was in error. Therefore, we withdraw the Director's determination that the Petitioner did not establish eligibility under the third Dhanasar prong. On remand, if the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

Based on the foregoing, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as a member of the professions with an advanced degree. See section 203(b)(2)(B)(i) of the Act. In addition, we are remanding to the Director to consider all three prongs of the Dhanasar analytical framework and 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. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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