U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33947177

Date: SEP. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the food industry, 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 denied the petition, concluding that the record establishes the Petitioner is eligible for EB-2 classification, but does not establish that she is eligible for a national interest waiver as a matter of discretion. 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.

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. *Matter of Dhanasar* provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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.

*Dhanasar*, 26 I&N Dec. at 889.

## II. ANALYSIS

On appeal, the Petitioner asserts that the Director's decision does not explain the specific reasons for denial and that, although the submitted documents are listed in the denial, "[n]one of the mentioned documents were explored, reviewed, analyzed, or even referenced. . . ." We agree with the Petitioner's assertion that the decision is deficient. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, 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 the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, the decision does not meet these requirements.

The Director states that the Petitioner "[h]as not submitted sufficient evidence," however, they do not analyze the documents that were submitted and explain why they are not sufficient. The Director generally describes the Petitioner's assertions regarding the impact of her proposed endeavor and then concludes, "[t]herefore, the petitioner has not established that the proposed endeavor is of national importance," but does not analyze or explain why the Petitioner's proposed endeavor does not rise to the level of national importance under the *Dhanasar* framework. The Director does not discuss the Petitioner's eligibility for prong two of the *Dhanasar* framework at all.[2] The decision next states that the Petitioner does not meet prong three of the *Dhanasar* framework, here too with general conclusions that the Petitioner did not submit sufficient evidence without an explanation or analysis of the evidence in the record. We agree with the Petitioner that the decision does not provide an analysis of the evidence or sufficiently explain why the evidence in the record is deficient.

## III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether they establish eligibility for EB-2 classification and each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

---

[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] We note the Petitioner states on appeal that the Director concluded she met prong two of the *Dhanasar* framework, however this is incorrect. The Director states in the request for evidence that she had not met prong two and the decision does not address this prong, but states, "[t]he petitioner has not met all three prongs."

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