U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33964059

Date: SEP. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a supply chain researcher, seeks second preference 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 immigrant 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 though the Petitioner qualified for classification as a member of the professions holding an advanced degree, 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 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.

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 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

[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).

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

Id.

In evaluating eligibility for a national interest waiver, the Director determined that the Petitioner established the substantial merit of his proposed endeavor to investigate and develop a model of the intersection of public policy and supply chain management, but did not establish the national importance of the endeavor, that he is well positioned to advance it, and that, on balance, it would benefit the United States to waive the job offer requirement. On appeal, the Petitioner asserts that the Director erred by failing to address the relevant evidence submitted to establish his eligibility under the three prongs of the *Dhanasar* framework and applying inappropriate standards that are not addressed in *Dhanasar*. As such, the Petitioner maintains that the decision does not provide an adequate explanation or sufficient basis for the denial of the petition. Upon review, the record indicates that the Director's decision lacked a proper analysis of the relevant evidence. For the reasons discussed below, we conclude that a remand is warranted in this case.

In evaluating national importance of the endeavor under the first prong of *Dhanasar*, the Director initially stated in the request for evidence (RFE) that the Petitioner established the proposed endeavor's national importance, then concluded in the denial that the national importance requirement was not established. The Director's analysis in the denial included references to documents which appear unrelated to the Petitioner's filing. For example, the Director noted that the Petitioner's RFE response included a business plan and personal statement that indicated the proposed endeavor is opening a consulting business, offering services to small and medium-sized businesses.

In addressing whether the Petitioner is well positioned to advance the proposed endeavor under *Dhanasar*'s second prong, the Director applied standards that are outside the scope of the analytical framework established in *Dhanasar*. In doing so, the Director did not fully consider evidence relevant to the second prong analysis, which requires consideration of the individual's education, skills, knowledge, and record of success in related efforts; whether they have a model or plan for future activities; any progress the individual has made towards achieving the proposed endeavor; and evidence of the interest of potential customers, users, investors, or other relevant entities or individuals. The Director did not address all relevant documentation related to these factors, such as the Petitioner's publication and citation history, and failed to properly weigh other evidence in the record, specifically the recommendation letters. The Director's analysis under the second prong appears to be based, in part, on a determination that the recommendation letters did not demonstrate that the Petitioner "has influenced the Supply Chain Management field or industry on a national or global scale" and "there is no corroborating evidence to support that the [Petitioner's] work impacted the project and operations management field nationally or globally." The Petitioner is not required to demonstrate national or global importance under *Dhanasar*'s second prong.

Further, the Director determined that the recommendation letters were insufficient because they were from current or prior colleagues of the Petitioner and not from independent sources and the letters did not explain the impact of the Petitioner's achievements and whether the supply chain management industry is now using and applying his work. However, the record contains Independent Advisory Opinion letters from individuals who state that they have not worked with the Petitioner and describe his contributions to the field's knowledge of public policy and supply chain management. The

Director should analyze the specific content of the record to determine if the evidence demonstrates that the Petitioner is more likely than not 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.

Finally, in analyzing whether it would benefit the United States to waive the requirement of a job offer under *Dhanasar*'s third prong, the Director stated the law and the relevant considerations in performing the third prong's balancing analysis but referenced documents which appear unrelated to the Petitioner's filing, such as articles and reports regarding the importance of small businesses. If the Director concludes that the Petitioner's documentation does not meet this prong, the decision should address his arguments and evidence, and explain the relative decisional weight given to each balancing factor.

While the evidence of record may ultimately be insufficient to demonstrate the Petitioner's eligibility for the requested national interest waiver, the Director's determination that he did not satisfy any of the three prongs did not adequately address the submitted evidence or properly apply the analysis set forth in *Dhanasar*, and therefore did not sufficiently explain the reasons for denial. Therefore, 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 he has established eligibility under each of the three prongs of the *Dhanasar* framework.

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