U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26360585

Date: APR. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist who states he intends to work in the United States as an entrepreneur, 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 did not establish (1) that the Petitioner qualifies as a member of the professions holding an advanced degree and (2) 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 dismiss the appeal.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their 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, under section 203(b)(2) of the Act. The implementing regulations define "advanced degree" as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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 demonstrates eligibility for the underlying EB-2 classification, they must then establish 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
- On balance, waiving the job offer requirement would benefit the United States.

As noted, the Director denied the petition based on two independent and alternative grounds. First, the Director determined that the Petitioner did not establish his eligibility for classification as a member of the professions possessing an advanced degree. The Director determined that, while the Petitioner established that he has the foreign equivalent of a bachelor's degree, he did not sufficiently document his five years of progressive post-baccalaureate experience through letters from prior employers detailing the duties he performed. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Further, the Director concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner did not meet any of the three prongs of the *Dhanasar* analytical framework.

The Petitioner's appeal consists of a Form I-290B, Notice of Appeal or Motion, on which he indicated that he would not be submitting a brief and/or additional evidence. Where asked to provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed, the Petitioner states that the submitted letters from his prior employers contained sufficient detail to establish his five years of progressive post-baccalaureate experience and that there was otherwise sufficient evidence in the record to demonstrate his eligibility to be classified as a member of the professions with an advanced degree.

However, on appeal, the Petitioner does not contest the Director's specific findings regarding the national interest waiver determination and, therefore, we deem them to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-,* 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Moreover, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for EB-2 classification. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-,* 26 I&N Dec. 516, 526 n. 7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Finally, although not addressed in the Director's final decision, we note the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA 750B, Statement of Qualifications of Alien, in duplicate." Alternatively, USCIS will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment

[1] *See also 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).

Certification. *See* 6 *USCIS Policy Manual* F.5(D), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

The Petitioner did not provide this evidence at the time of filing. In a request for evidence (RFE), the Director advised the Petitioner that he must submit an original labor certification application with the employee-specific portions completed and containing his original signature and the signature of any preparer. The Petitioner's response to the RFE did not include this required initial evidence and for this additional reason, the petition cannot be approved. *See* 8 C.F.R. § 103.2(b)(8)(ii) (providing that USCIS in its discretion may deny a benefit request for lack of initial evidence) and 8 C.F.R. § 103.2(b)(14) (stating that failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.