U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962757

Date: DEC. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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 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 approved the immigrant petition, but subsequently issued a request for evidence (RFE) and later denied the petition, concluding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that although the Petitioner qualified for classification as a member of the professions holding an advanced degree, she 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. 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, petitioners must 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. In addition, petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance;

[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).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

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 . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [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.

II. ANALYSIS

A. Procedural Error

On appeal, the Petitioner submits documentation previously presented to the Director and a brief asserting that she is eligible for a national interest waiver. She notes that prior to the denial of the petition the Director sent two notices to her. The first notice indicated that the instant petition was approved, then later the Director issued an RFE asking for additional evidence to establish her eligibility for a national interest waiver. The Petitioner responded to the RFE, providing new evidence in support of her petition. The Director reviewed this evidence and then denied the petition concluding that the petition had been approved in error. The Director determined that the Petitioner qualified for the EB-2 classification as an advanced degree professional, and was well positioned to pursue her endeavor, but she did not establish the substantial merit and national importance of her endeavor and that on balance, she was eligible for a national interest waiver as a matter of discretion.

We conclude that the Director procedurally erred in approving the petition, then issuing an RFE and denying the petition. Once a director decides to reverse the decision on an approved immigrant visa petition, the proper course of action is to "revoke" the approval, not reopen on service motion and deny. There are specific standards for revoking the approval of an immigrant visa petition. See § 205 of the Act ("good and sufficient cause"); see also 8 C.F.R. § 205.2. If the director does not satisfy the legally-mandated requirements to revoke an approval by issuing a notice of intent to revoke for "good and sufficient cause," the approval is not properly revoked.

By itself, a director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke (NOIR) an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Upon the proper issuance of NOIR for good and sufficient cause, a petitioner bears the burden of proving eligibility the

requested immigration benefit. *Id*. at 589. With respect to the standard of proof in this matter, a petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. In other words, a petitioner must show that what she claims is "more likely than not" or "probably" true. USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Additionally, to determine whether a petitioner has met her burden under the preponderance standard, USCIS considers not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

On remand, if the Director determines anew based on a review of the entire record that the prior approval of the petition was in error, then a NOIR should be issued to the Petitioner giving her an opportunity to rebut or resolve the stated revocation grounds. *Matter of Estime*, 19 I&N Dec. at 450. Upon receipt of a timely response to a NOIR or the Petitioner's lack of response to it, the Director should enter a new decision. If the Director's ultimate decision is adverse, the Petitioner should issue a revocation notice, informing the Petitioner in detail why the petition may not be approved based on the evidence of record.

B. National Interest Waiver Request

The petition was filed in March 2022 - thus she must establish her eligibility for the immigration benefits sought in this petition as of that date. 8 C.F.R. § 103.2(b)(1). The Petitioner maintains that she intends to perform services as a college professor teaching criminal justice and law. She asserts that her proposed duties comport with those employed in the "Postsecondary Teachers, SOC Code 25-1111" occupation. *See* U.S. Department of Labor's Occupational Information Network (O*NET) summary report, *Postsecondary Teachers*, https://www.onetonline.org/link/summary/25-1111.00.

Despite the procedural errors in denying the petition, (instead of issuing a NOIR and revoking it), we have considered the entire record including the Petitioner's claims of eligibility under the *Dhanasar* analysis on appeal and agree with the Director's ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner's statements reflect her intention to continue working in her field as a college professor in the United States, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the law profession more broadly at a level commensurate with national importance. In addition, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

On remand, the Director should analyze the Petitioner's evidence anew to determine, among other things, if her proposed endeavor has significant national or global implications with respect to her intended activities, significant potential to employ U.S. workers, or other substantial positive economic effects. If the Director concludes that the Petitioner does not warrant the granting of a national interest waiver as a matter of discretion (after issuing a NOIR and deciding that the

Petitioner’s NOIR response does not sufficiently rebut or resolve the stated revocation grounds), the Director’s decision to revoke the petition should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

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