U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26269869

Date: MAR. 31, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a psychologist and therapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, 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 Nebraska Service Center revoked the approval of the petition without issuing a notice of intent to revoke (NOIR), concluding that the petition was approved in error because the Petitioner did not submit either a Form ETA 750B or Form ETA 9089.[1] The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Petitioner submits a completed Form ETA 750B, Statement of Qualifications of Alien, along with copies of previously submitted evidence. He emphasizes that he already established that he is exempt from the job offer requirement for the EB-2 classification based on his "studies, research and work experience" and requests that the revocation decision be overturned.

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 conclude that the Petitioner's submission of the Form ETA 750B overcomes the Director's sole basis for revocation. However, the record as presently constituted does not establish the Petitioner's eligibility for a national interest waiver of the job offer requirement. Accordingly, we will withdraw the Director's decision and remand the matter for further consideration and entry of a new decision consistent with the following analysis.

[1] 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, U.S. Citizenship and Immigration Services (USCIS) will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification. *See* 6 *USCIS Policy Manual* F.5(D), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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. 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[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.

At any time before a beneficiary or self-petitioner obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a petition's erroneous approval may justify its revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

II. ANALYSIS

In support of his EB-2 classification, the Petitioner submitted copies of his foreign educational credentials, professional certificates and recognitions, letters from two employers, his resume, and a copy of his doctoral thesis. Notably, the Petitioner provided evidence that he has a "master in psychotherapy" from the Institute of [redacted] in Mexico. Having reviewed the information contained in the record and the Electronic Database for Global Education (EDGE) database, created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), we find that the Petitioner's foreign education is equivalent to that of a professional holding an advanced degree pursuant to 8 C.F.R. § 204.5(k)(3)(i)(A). The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge. He therefore qualifies for the underlying EB-2 classification as an advanced degree professional. However, for the reasons discussed below, the record does not establish the Petitioner's eligibility for a national interest waiver of the job offer requirement.

The Petitioner indicated on the Form I-140 at Part 6, item 3, where asked to provide "basic information about the proposed employment," that he intends to work as a psychologist and therapist and will "provide counseling to all types of persons in a critical and emotive situation." He also states that he has previously "carried out research work on the behavior of people with addictions," and that he

[2] *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).

"started a systematic project to help addicted people." The record contains no further description of, or evidence related to, the Petitioner's proposed endeavor and no statements from the Petitioner that specifically address how the submitted evidence establishes his eligibility for a national interest waiver under the *Dhanasar* framework. For example, 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 mental health field more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation. Therefore, we conclude that the record as presently constituted does not demonstrate that the Petitioner meets the requirements for a national interest waiver set forth in the *Dhanasar* precedent decision.

Considering this deficiency, we will remand this matter for further consideration by the Director. On remand, the Director may issue a new NOIR pertaining to concerns regarding this or other issues as the Director deems appropriate.

III. CONCLUSION

The Petitioner has overcome the Director's sole basis for revocation; however, the record as presently constituted does not establish his eligibility for a national interest waiver of the job offer requirement under the *Dhanasar* framework. We are therefore remanding the matter for further consideration by the Director. The Director may issue a new NOIR and, following the Petitioner's response thereto or the expiration of the time period for response, issue a new decision.

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