U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24509093

Date: MAY 9, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a technology-based business operations specialist, seeks second preference 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. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval, concluding the Petitioner misrepresented material facts in order to obtain a national interest waiver. 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.

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. Next, a petitioner must then demonstrate 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*, 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 petitioner shows:

- 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.

[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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that 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 approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that 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.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The Director initially approved the petition, and the Petitioner later appeared at the U.S. Embassy in Seoul, South Korea for his immigrant visa interview. Based on the interview and derogatory information, the Embassy returned the petition to the Director and recommended revocation. The Director issued a notice of intent to revoke (NOIR) and informed the Petitioner of the following:

> [The Petitioner] claimed to work as a Technology Base[d] Business Operations Specialist. During an interview [the Petitioner] was unable to answer questions regarding semiconductors when in fact, he has only ever been involved in sales.
>
> Comparison letters showed to be modified from [redacted] to add more content and added in the English version that [the Petitioner] is considered an expert in the field (that was not included in the Korean version of the letters).
>
> The [P]etitioner willfully made a false representation, and it is material to whether the petition is eligible for the request benefit.
>
> By claiming his job experience, scope of his role, and the effect of his work on his field, the [P]etitioner willfully made a false representation, and it is material to whether the [Petitioner] is eligible for the requested benefit.

The Petitioner responded to the Director's NOIR, contested the allegations, and submitted new evidence. In revoking the approval, the Director acknowledged the Petitioner's response, specifically stating: "During the period, USCIS received responses from the beneficiary. USCIS has added this

evidence to the record, and has considered the totality of this evidence as reflected in the analysis below." However, the Director's decision did not further address any of the Petitioner's particular NOIR response arguments. Instead, the Director cited to language from the NOIR, repeating the derogatory information from the Petitioner's interview and letters, referenced above. Moreover, although the Director claimed he "has considered the totality of this evidence as reflected in the analysis below," the decision did not discuss any of the NOIR response evidence.

If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. 8 C.F.R. § 205.2(c). Because the decision did not address the Petitioner's particular NOIR response arguments and evidence and discuss why they did not overcome the grounds in the NOIR, the Director did not provide specific reasons for the revocation. We are therefore remanding the matter for the Director to consider the NOIR arguments and evidence, including the additional arguments and evidence on appeal, and articulate to the Petitioner the specific reasons why the arguments and evidence do not overcome the grounds in the NOIR.

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