U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26785902

Date: MAY 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial manager, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification under section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that, although the Petitioner demonstrated his eligibility for EB-2 classification as a member of the professions holding an advanced degree, he did not establish that a waiver of the classification's job offer requirement 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The decision contains several factual errors, lacks sufficient analysis and discussion of the evidence in the record, and reaches conclusory findings with respect to the Petitioner's eligibility for the requested national interest waiver. Accordingly, 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. *See* section 203(b)(2)(B)(i) of the Act. The record supports the Director's determination that the Petitioner qualifies as a member of the professions possessing an advanced degree. The Petitioner submitted an official academic record demonstrating that he completed a master's degree in corporate finance at a Brazilian university. *See* 8 C.F.R. § 204.5(k)(2) (defining advanced degree as "any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate").

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 thatUSCIS may, as matter of discretion[4], 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 to the Petitioner's eligibility for the national interest waiver, the Director described the Petitioner's proposed endeavor to work as "a political scientist, operations research analyst and international relations expert," a description that is not in accord with the evidence in the record. The Petitioner's proposed endeavor, as he described in a business plan in his initial filing, in response to a request for evidence (RFE), and on appeal, is to establish a financial management consulting business in Texas. The decision contains no acknowledgment of the Petitioner's proposed endeavor as it is described in the record. It also refers to an RFE issued on May 17, 2022, while the RFE in this case was issued on July 22, 2022. These errors raise questions as to whether the Director's analysis was based on the evidence submitted in support of this petition.

The Director's discussion of the first prong of the *Dhanasar* framework, relating to the substantial merit and national importance of the proposed endeavor, consists primarily of boilerplate language and a conclusory finding that the Petitioner did not meet his burden to meet the national importance element of this prong. It does not include, for example, any discussion or analysis of the Petitioner's business plan or its contents or any other evidence the Petitioner submitted for consideration under this prong. The decision, which cites to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) and *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm. 1998), also implies that the Petitioner made an impermissible material change to his proposed endeavor when responding to the RFE but does not address what led the Director to such a conclusion. In fact, the record shows that the Petitioner submitted the same business plan at the time of filing and in response to the RFE and we can find no support for the Director's apparent determination that the Petitioner made material changes to his initial petition.

As to the third prong of the *Dhanasar* analytical framework, the Director stated the law and relevant considerations in performing the third prong's balancing analysis. However, the Director did not discuss the evidence that he weighed in balancing those considerations nor address the Petitioner's specific claims regarding his eligibility under the third prong. On appeal, the Petitioner emphasizes that the Director, in concluding that it would not be impractical for an employer to obtain a labor certification and that the Petitioner had not shown that his endeavor may lead to potential creation of jobs, overlooked his consistent claim that his endeavor will involve establishing his own business (thus making him ineligible for a labor certification) and creating jobs for U.S. workers. Further, we observe the decision's discussion of the third prong includes a statement that the Petitioner did not establish that he "is well positioned to advance the proposed endeavor." This statement directly contradicts the Director's separate determination that the Petitioner satisfied the second prong of the *Dhanasar*

framework, which specifically requires a determination that the petitioner is well positioned to advance the proposed endeavor.

Overall, the errors and the lack of specific references to the evidence in the record make it unclear whether the Director analyzed and based the decision on the evidence submitted by the Petitioner. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision did not sufficiently explain the reasons for denial.

Therefore, we will withdraw the Director's decision based on this deficiency. On remand, the Director should review the entire record in considering whether the Petitioner has sufficiently identified his proposed endeavor and whether he has established eligibility under each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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