U.S. Citizenship and Immigration Services

In Re: 22646258   Date: OCT. 31, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, 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 denied the petition, concluding that the Petitioner established eligibility for the EB-2 classification as an advance degree professional, but determined that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The sole issue to be determined in this appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.[4] With respect to the standard of proof in this matter, a petitioner must establish that he 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 he 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 his 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 the Form I-140, the Petitioner initally indicated that he intended to work as a [⬚] data scientist" with the following job description: "modeling data to predict, demand revenue and market

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[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).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Director made the determination about the Petitioner's eligibility for the EB-2 classification within a request for evidence (RFE) issued prior to the denial of the petition.

elasticity to evaluate the effect of strategy on company profit. Building and maintaining optimization models to increase the profit." The Petitioner's initial filing included his Form ETA-750B, Statement of Qualifications of Alien, identifying his U.S. employer as "the [____] Corporation" [H-] and his occupation as a [_____] data scientist."

In response to the Director's request for evidence (RFE), the Petitioner provided a statement discussing his employment history and plans for work in the United States, as follows in pertinent part:

> I received my Ph.D in industrial engineering from [L-] University, where my main research focus was centered on optimization, and a combination of machine learning techniques and operational research to solve business and practical problems. Due to my extensive experience with mathematical optimization, heuristic and meta-heuristic techniques, simulations, machine learning techniques and statistical modeling tools, [H-] hired me to fill the role of data scientist on the [_____] Data Science Team.

> My proposed endeavor is to continue developing and applying exact methods and heuristic techniques to solve optimization problems that all for the improvement of public services while reducing the cost of government services and minimizing the opportunity for hazards in transportation. . . .

> . . . .

> I want to briefly illustrate the national importance of my proposed endeavor and how I am actively conducting research in these areas to benefit the United States by briefly introducing my research projects:

> *Applying optimization model and techniques in real world problem[s].*[5] Mathematical optimization is being used by leading companies and organizations resulting in tens or even hundreds of millions saving and revenue which is related to [my] project [_____] [which was discussed] in my initial filing. . . . Another sensible example is the optimization in [____] preventative maintenance, which I worked on extensively in my project [_____] [which was discussed] in the initial filing. . . . where I performed research and employed statistical models and machine learning to identify and predict [_____] failure and deformity based on inspection data.

> . . . .

> Future Research Plans: I am currently conducting research on anomaly detection models, which aid in the prediction of customer behavior, which has great importance in the tourism industries. . . . In another project, I am planning to collaborate with the

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[5] The Petitioner provided evidence in support of the petition, including copies of his recent research publications in these specific areas and articles generally discussing the application of his chosen research focus in matters of national security, and industries involving tourism, medical care, manufacturing, and telecommunications activities, among other things.

Department of Civil and Environmental Engineering at [L-] University on dredge material stabilization research. The dumping of [_____] [DM] in the [____] environment impacts the [_____] communities by either directly burying organisms at the [____] ground, or indirectly by suspending and relocating the [_____] (usually described as smothering) in the adjacent areas, which has been banned by the EPA since 1992. Recycling the DM and stabilizing for beneficial purposes seems to be an interesting alternative to disposal . . . . My [paper on this topic] has been submitted to Journal of Materials in Civil Engineering for review [see the submission email in attachment 9].

Overall, I plan to continue my research in optimization, statistical modeling, and machine learning to find answer[s] to real world problems. The application of my knowledge in these areas stands to benefit subjects such as public safety [_____] environmental issues [_____], revenue optimization [_____] [_____], and the prediction of customer behavior [_____] [_____]. I eagerly want to continue my research not only [to] publish papers but to help humanity and improve the qualify of life for those living in the United States.

1. Substantial Merit and National Importance of the Proposed Endeavor

The first prong of *Dhanasar* focuses on the specific endeavor that the Petitioner proposes to undertake. In the decision denying the petition, the Director concluded that the Petitioner's proposed endeavor has substantial merit, but he has not demonstrated its national importance. In his appeal brief, the Petitioner contends that he has demonstrated the national importance of his proposed endeavor under the preponderance of evidence standard and that the Director's decision was in error, in part, because "despite clearly [listing] the evidence submitted. . . . the [Director] failed to evaluate – or even mention – any of this evidence in the consideration of the national importance of [the Petitioner's] proposed endeavor."

The Petitioner further contends "[i]n addition to the evidence submitted with the [p]etition, we highlighted several exhibits included with the RFE response [see RFE response, pp 5-7] relevant to this consideration." Collectively considering the evidence submitted prior to the Director's decision, we agree with the Petitioner that his evidence was not given due consideration therein. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denial to allow the respondent a meaningful opportunity to challenge the determination on appeal). While the Director listed the evidence submitted in support of the petition in his denial, the decision does not adequately address the documentation in the record.

The Director should analyze the Petitioner's evidence to determine if his proposed endeavor has significant national or global implications with respect to optimization and operations research, significant potential to employ U.S. workers, or other substantial positive economic effects. If the Director concludes that the Petitioner's evidence does not meet the national importance requirement of *Dhanasar*'s first prong, his decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

2. Well Positioned to Advance the Proposed Endeavor

To determine whether a petitioner is well positioned to advance the proposed endeavor under *Dhanasar's* second prong, USCIS considers factors, including, but not limited to: the individual's education, skills, knowledge, and record of success in related efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Dhanasar at 890.*

The Director concluded that the Petitioner is not well positioned to advance his proposed endeavor under *Dhanasar's* second prong. On appeal, the Petitioner contends that "[a]bsent from the [d]ecision's rationale is a discussion regarding of any of the relevant factors outlined in *Dhanasar* that are pertinent to the second prong analysis." We agree with the Petitioner that the Director's decision did not adequately discuss the evidence provided, nor did he sufficiently explain the basis for his adverse determination under *Dhanasar's* second prong.

3. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. While the Director's decision identifies some of the factors to consider when determining whether a petitioner qualifies under *Dhanasar's* third prong and indicates that the Petitioner had not established eligibility under this prong, the Director did not adequately discuss the evidence and sufficiently explain the basis for this determination. If the Director determines that the Petitioner's documentation does not meet this prong, his decision should address all of the Petitioner's arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

We withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should review all evidence submitted to date (including the brief and the documentation submitted on appeal) and analyze the Petitioner's contentions and evidence to determine if he meets all three prongs set forth in the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the new decision. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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