U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24516020

Date: APR. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a finance director, seeks employment-based second preference (EB-2) 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 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 did not sufficiently describe his proposed endeavor and, thus, did not establish he was eligible for or otherwise merited 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.

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[1], 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 an initial matter, we note that the Director's decision incorrectly stated that the Petitioner established that he is an individual of exceptional ability. However, as the Petitioner has shown that he is an advanced degree professional, he qualifies for the underlying EB-2 classification.[2]

[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).

[2] An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2).

A petitioner must identify "the specific endeavor that [he] proposes to undertake." *See Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it.

According to the Petitioner's initial "Professional Plan and Statement," he intends "to work as a Finance Director for U.S. companies, engaged in the Energy Industry, specifically Oil & Gas" and ultimately "continu[e] [his] work with [redacted] in Texas." The Director determined that the Petitioner did not sufficiently describe his proposed endeavor and issued a request for evidence (RFE). As part of the evidence provided in response, the Petitioner submitted a "certificate of filing" for [redacted] dated May 28, 2021,[3] along with a business plan and stated that he plans "to create a company that will be specialized in offering Finance and Accounting Consulting Services with a focus in **Process Improvement**, **Design Thinking**, and **Innovation** throughout the American territory . . . and serve government entities and nonprofit organizations." The Director did not address this evidence in the decision.

The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

While we agree with the ultimate conclusion that the Petitioner has not established that he qualifies for a national interest waiver, the Director should determine whether the evidence submitted in response to the RFE 1) clarified or provided more specificity to the proposed endeavor as initially described, or 2) presented a new set of facts regarding the proposed endeavor, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); *see also Dhanasar*, 26 I&N Dec. at 889-90. The Director should also consider whether the Petitioner provided consistent information to determine what the proposed endeavor actually is in order to accurately analyze it under the first and second prongs of the *Dhanasar* analysis. If the Director concludes that the Petitioner did not change his proposed endeavor and has sufficiently and consistently described it, then he should conduct a thorough analysis to determine whether the Petitioner meets any of the prongs under *Dhanasar*.

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

[3] The petition was filed on February 18, 2020.