U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25690621

Date: MAR. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a medical practitioner and researcher, 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. *See* 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 Texas Service Center denied the petition, concluding that the Petitioner 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. Specifically, the Director did not make a finding as to the Petitioner's eligibility for the underlying EB-2 classification, and, moreover, analyzed and discussed evidence that is not in the record. 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. We note, however, that the Director did not make an initial finding that the Petitioner qualifies for the underlying EB-2 classification. Rather, the Director discussed only her request for a national interest waiver. In one section of the decision—discussing whether the Petitioner is well-positioned to advance her endeavor—the Director did state that, "the petitioner's education renders her eligible for the underlying immigrant visa classification . . .," but he did not make a specific finding that she qualifies for EB-2 classification nor explain the evidence in the record used to reach this finding.

The Petitioner claims to qualify for the EB-2 classification as an advanced degree professional based upon her education in Nigeria. The initial I-140 Petition included a diploma awarding the Petitioner the degree of Bachelor of Medicine, Bachelor of Surgery from the University of [redacted] in 2001 and a diploma awarding the Petitioner the degree of Master of Science in Public Health, General Public Health Option from the University of [redacted] in 2018. The Director issued a request for evidence (RFE) for, among other items, additional evidence to establish that the Petitioner has obtained the equivalent of an advanced degree in the United States. The Petitioner responded to the RFE, stating that she was submitting her academic transcripts and a World Education Service credential evaluation. However, the transcripts and credential evaluation are not present in the record.

Because the Director's decision did not make a finding as to EB-2 classification nor acknowledge this missing documentation, the Petitioner did not have the opportunity to address or overcome this evidentiary issue on appeal. On remand, the Director should consider whether the evidence establishes that the Petitioner has obtained the equivalent of an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(3)(i)(A) or has otherwise established eligibility for the underlying visa classification as an advanced degree professional or an individual of exceptional ability.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 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 USCIS may, as a 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 to the Petitioner's eligibility for a national interest waiver, the Director in his decision described the Petitioner's proposed endeavor in a way that is not in accord with the evidence in the record. The Petitioner's proposed endeavor, as she described in her initial filing and reiterates on appeal, is to "work on prevention of maternal and infant micro and macro-nutrient deficiency through research . . . ."

But the Director stated that the proposed endeavor is to "advance the transportation safety systems through the use of technologies and tools such as machine learning, data science, artificial intelligence and connected vehicle first class risk management and increasing the ability to identify safety threats . . . ." The Director also stated that the Petitioner "explained that her expertise and experience in Transportation industry will allow her to easily assist in the improvement of transportation safety in the U.S." However, as revealed by the record and confirmed by the Petitioner on appeal, her proposed endeavor does not relate to transportation safety systems.

[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).

Throughout the discussion of whether the Petitioner has established her endeavor's national importance, the Director referred to evidence not from this record and claims not made by the Petitioner. For example, he found that she did not demonstrate that her knowledge could be replicated "by other project managers to positively impact the transportation industry," although the Petitioner makes no claim to be a project manager and does not work in the transportation industry. Additionally, the Director referenced a business plan submitted by the Petitioner, although there is no business plan in the record.

In the Director's discussion of whether the Petitioner is well-positioned to advance her endeavor, he again did not sufficiently analyze or discuss the evidence in the record. Although he discussed some evidence that does relate to the Petitioner's evidence, the Director also stated that the Petitioner "submitted documentation of his professional memberships" and "evidence of his work on various projects," which does not appear to relate to the Petitioner's filing.

As to the third prong of *Dhanasar*, whether the petitioner has established on balance that waiving the job offer requirement would benefit the United States, the Director mischaracterized the record by stating that the Petitioner submitted "copies of his personal statement, educational credentials, resume, testimonial letters and proof of income." The record does not contain evidence relating the Petitioner's income, but it does contain additional evidence including scholarly articles relating to the Petitioner's proposed endeavor. The Director made conclusory statements that the evidence did not establish eligibility, but he did not discuss the evidence that he weighed in performing the third prong's balancing analysis nor address the Petitioner's specific claims, if any, as to the third prong. Again, the lack of specific references to the evidence in the record and the alternating use of masculine and feminine pronouns make unclear whether the Director was analyzing the evidence submitted by the Petitioner.

An officer must fully explain the reasons for denying a visa petition 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)(i); *see also 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). 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 her proposed endeavor and whether she has established eligibility under each of the three prongs of the *Dhanasar* framework.

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying classification and for a national interest waiver and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination. 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.