U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 26929076

Date: MAY 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a systems analyst, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 record did not establish that the Petitioner qualifies for the 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

Once a petitioner demonstrates EB-2 eligibility, 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

[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).

- 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.

The record demonstrates that the Petitioner qualifies as a member of the professions who holds a foreign degree equivalent to a U.S. baccalaureate degree plus more than five years of progressive post-baccalaureate experience in the specialty, which is equivalent to a master's degree under 8 C.F.R. § 204.5(k)(2). The remaining issue to be determined 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.

When she filed the petition in December 2021, the Petitioner provided a five-sentence statement, indicating that her "proposed endeavor as a Systems Analyst specializ[ing] in the oil and gas industry, is to design and implement systems and models that will help U.S. based oil and gas companies to improve their existing methods." The Petitioner offered few additional details as to how she would work for the industry.

The Director then issued a request for evidence (RFE), asking the Petitioner to "document how her proposed endeavor will offer original innovations with positive economic benefits that will reach beyond her employer and their clients to benefit the nation as a whole, not just her specific employer." The Petitioner's response included a new statement, more than five pages long. The Petitioner repeated her intention to "help U.S. based oil and gas companies," and stated that she plans to establish a company in Florida and work "as a Consultant to U.S. companies." The Petitioner listed the types of services she intends to offer, the process that she would follow with customers, and details about intended staffing, marketing, and other aspects of the consulting business.

The Director denied the petition, stating:

> Since the petitioner now present[s] a new set of facts regarding her proposed endeavor that is material to eligibility for a national interest waiver . . . , then USCIS has no choice but to conclude that she has made material changes to the petition in order to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). Consequently, because the focus of the petitioner's proposed endeavor has materially changed, then a new petition must be filed in order to support the new facts in the record. 8 C.F.R. § 103.2(b)(1).

We agree with the Director that a petitioner cannot remedy a deficient filing, and retain the same priority date, by making material changes to the proposed endeavor. But we also agree with the Petitioner's assertion on appeal that her response to the RFE included no such material changes. Nothing in the second statement contradicts or conflicts with the original statement; rather, the second statement contains information missing from the first statement only because the second statement provides considerably more detail than the much briefer original statement. The record does not support the only stated basis for denial of the petition, and therefore we withdraw the decision.

Because the Director based the decision only on the purported material change to the proposed endeavor, the Director's decision does not discuss the merits of the Petitioner's national interest waiver claim. It is for the Director, not us, to make the initial determination in that regard on remand, but it

appears that the record is not fully developed with respect to the waiver claim. We do not require petitioners to demonstrate that their endeavors are more likely than not to ultimately succeed. *Matter of Dhanasar*, 26 I&N Dec. at 890. Nevertheless, eligibility for the waiver requires a higher burden than identifying a problem and stating an intention to help solve it. A petitioner must demonstrate their eligibility for the benefit sought. Likewise, the Petitioner discussed the importance of "innovation" and the impact of "[t]he latest oil and gas production software," but the development of that software would tend to be more consequential than training in the *use* of software created by others. Therefore, the Petitioner must establish her role in the innovation she cited as a basis for her waiver claim, rather than just demonstrate that she works in a field in which such innovation takes place. The burden is on the Petitioner to show how, and to what extent, her work will affect issues discussed in her background materials such as pollution, climate change, and the economic impact of the oil and gas industry.

The Petitioner has overcome the only stated ground for denial by demonstrating that she did not substantially change her proposed endeavor in response to the RFE. Therefore, we will withdraw the Director's decision. Nevertheless, the record does not satisfactorily establish the Petitioner's eligibility for the national interest waiver. Therefore, we will remand the matter for a decision on the merits.

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