U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28467745

Date: SEPT. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner states that she is an "entrepreneur in the field of business management." She 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 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 record did not establish that a waiver of the required job offer, and thus of the labor certification, 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). 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the analysis below.

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. Section 203(b)(2)(B)(i) of the Act. 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 that U.S. Citizenship and Immigration Services (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.

II. ANALYSIS

As previously indicated, the Director's decision did not offer a complete analysis or adequately explain the deficiencies in the evidence. *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 denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

the Director concluded that the Petitioner did not establish that she meets any of the three-prong criteria set forth in *Dhanasar*.[2] Specifically, the Director determined that despite expressing her intent to work as an entrepreneur in the business management field, the Petitioner did not adequately describe her proposed endeavor or explain with specificity what she intends to do in the business management field. The Director therefore concluded that the Petitioner did not establish that her endeavor has substantial merit or national importance as required under the first prong in *Dhanasar*. Although the record appears to support the Director's conclusion, it does not support the underlying analysis and reasoning that served as the basis for that conclusion.

As a preliminary matter, we note that the record contains various statements authored by the Petitioner's counsel, such as counsel's initial cover letter and the letter submitted in response to the Director's request for evidence (RFE), and we agree that these statements prepared by counsel are vague and lack specifics about the Petitioner's endeavor. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). However, counsel's assertions notwithstanding, the record also contains several statements from the Petitioner along with a corresponding business plan, all of which adequately convey that the Petitioner's proposed endeavor is to own and operate [redacted] a company the Petitioner formed in [redacted] 2021, approximately three months prior to filing this petition.

First, in support of the petition, the Petitioner provided a signed affidavit in which she stated that she intends to assume the role of "sole Partner/Owner of [redacted]" and that one of her "main responsibilities" in pursuing that endeavor is to sell specialized footwear to individuals with disabilities. Then, in a "Professional Plan & Statement," which was submitted in response to the RFE, the Petitioner again referred to [redacted] as the focus of her proposed endeavor and she remained consistent in maintaining the claim that the endeavor would seek to provide "inclusive fashion" by selling "quality footwear" that would be customized to suit the needs of both "the

[2] We note that the Director's denial focused entirely on the Petitioner's eligibility for a national interest waiver to the exclusion of the Petitioner's eligibility for the EB-2 classification. Therefore, despite the Petitioner's assertion that "the Service agrees that the Appellant qualifies for the requested classification as a member of the professions holding an advanced degree," the Director's decision does not render a determination on the issue of the Petitioner's EB-2 qualification.

American disabled population" and the general consumer population. These statements about the Petitioner's endeavor are reiterated in a business plan, which was initially submitted in support of the petition and was subsequently resubmitted in response to the RFE. The plan states that the Petitioner's shoe company is the focus of her endeavor and stresses the Petitioner's intent to offer "a wide variety of quality footwear products, especially for the American population with disabilities."

In light of the above, we conclude that the record contains sufficient documentation establishing that the Petitioner adequately described her endeavor; the Director's determination to the contrary was therefore incorrect. Further, because the Director incorrectly determined that the Petitioner provided a vague and deficient description of her endeavor and because that incorrect determination impacted the Director's analysis of the Petitioner's eligibility for a national interest waiver, we will withdraw the Director's decision.

Notwithstanding the deficiencies in the Director's decision and our withdrawal thereof, the evidence of record does not appear to demonstrate that the Petitioner met the requirements of the analytical framework set forth in *Dhanasar,* which requires the Petitioner to demonstrate that: (1) her endeavor has substantial merit and national importance, (2) she is well-positioned to advance the endeavor, and (3) on balance, waiving the job offer requirement would benefit the United States.

Because the Director's decision does not properly apply the *Dhanasar* framework to the facts in the record, we will remand the matter for entry of a new decision.

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