U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650238

Date: JULY 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 the Petitioner qualified for EB-2 classification as a member of the professions holding an advanced degree, but had not established 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 will dismiss the appeal.

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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:

- The proposed endeavor has both substantial merit and national importance;

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

The Petitioner proposed to establish a consulting business in [redacted] Texas. The Petitioner stated the business would specialize in "business intelligence, and the modernization of administrative, accounting, and controlling systems" and "will offer comprehensive services to small and medium-sized enterprises, self-employed persons, and entrepreneurs, with a focus on providing financial courses to the Hispanic community and young adults."

After reviewing the entire record, we adopt and affirm the Director's ultimate determination relating only to the national importance requirements under *Dhanasar's* first prong with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Martinez-Lopez v. Barr*, 943 F.3d 766, 769 (5th Cir. 2019) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner discusses the first prong requirements and then contends the Director's decision "contains instances of a misunderstanding and misapplication of law that goes beyond harmless error and reach the levels of abuse of discretion." The appeal brief delineates between two scenarios: the submission of no evidence versus the submission of insufficient evidence. Here, the Petitioner implies that the Director's analysis in the denial fell under the scenario in which no evidence was submitted to demonstrate the national importance of the proposed endeavor.

The Petitioner asserts she was placed at a disadvantage because the Director did not provide any meaningful review for the evidence she submitted. The Petitioner observes in prior cases, federal courts have noted that decisions failing to contemplate or discuss the entirety of the evidence in a filing amount to critical error in the adjudicative process. In support of this concept, the Petitioner cites to *Buletini v. INS*, 860 F. Supp. 1222, 1233 (E.D. Mich. 1994). The *Buletini* court opinion referred to the Director's failure to consider all the forms of evidence that the petitioner in that case submitted such as the book and the medical dictionary he authored, and his study that appeared in the largest circulation newspaper in that petitioner's home nation. *Buletini*, 860 F. Supp. at 1232–33. These are *forms* of evidence the *Buletini* court determined that the USCIS director had failed to consider; the court did not indicate that the director was required to discuss each and every piece of evidence within the record.

We note that in the appeal before us, the Director provided adequate analysis of the case. Although we agree with the Petitioner that the Director did not directly discuss every piece of evidence she considers salient, she has not established how those omitted documents demonstrated eligibility. In other words, the Petitioner did not demonstrate that the Director's failure to discuss every document in detail changed the outcome of the case. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence a petitioner presents. *Amin*

v. Mayorkas, 24 F.4th 383, 394 (5th Cir. 2022); *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992); *aff'd Morales v. INS*, 208 F.3d 323, 328 (1st Cir. 2000); *see also Pakasi v. Holder*, 577 F.3d 44, 48 (1st Cir. 2009); *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *see also United States v. Teixeira*, 62 F.4th 10, 25 (1st Cir. 2023) (concluding a trier of fact "need not articulate its conclusions as to every jot and tittle of evidence in making a determination").

Further, it is not enough to demonstrate errors in an agency's decision; the Petitioner must also establish that they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016); *Amin*, 24 F.4th at 394. As the Petitioner has not demonstrated she was prejudiced by the lack of discussion of any evidence, even if we agreed that this was an error, such a lapse would appear to be harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203.

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve our determination of her eligibility under the second and third prongs of the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.