U.S. Citizenship and Immigration Services

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

In Re: 31124988

Date: MAY 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a business owner who intends to sell ecological, biodegradable, and recyclable products in retail stores and online. He 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 pursuant to 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 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:

- 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).

As a preliminary matter, we note that the Director's denial focused entirely on the Petitioner's eligibility for a national interest waiver to the exclusion of any discussion about the Petitioner's eligibility for the EB-2 classification. The record appears to contain sufficient evidence to demonstrate that the Petitioner's education and work experience qualify him for the EB-2 classification as an advanced degree professional as defined in 8 C.F.R. § 204.5(k)(2), but the Director should examine this on remand.

Next, we will discuss the Director's conclusion that the Petitioner did not establish that he meets any of the three-prong criteria set forth in *Matter of Dhanasar*. First, the Director made an adverse finding on the substantial merit element of *Dhanasar's* first prong, noting that "[w]ithout the petitioner's proposed endeavor, the beneficiary impedes" a determination of the endeavor's substantial merit. In other words, the Director indicated that the adverse finding was based on a deficient description of the Petitioner's endeavor. We note, however, that the record contains multiple statements in which the Petitioner discussed his specific intent to operate [redacted] a business that he formed for the purpose of selling and distributing ecological and biodegradable products that are manufactured in the United States using recyclable materials.[2] Despite acknowledging the Petitioner's submission of a personal statement and business plan, both of which included details about the proposed endeavor, the Director at times mischaracterized the endeavor, stating that the Petitioner "intends to work as a manager in the field of business" even though the Petitioner provided a timeline describing a five-year plan to open six retail stores in Florida and engage in online sales of his products through an e-commerce specialist.

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[1] *See also 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 are discretionary in nature).

[2] The Division of Corporations for the State of Florida shows that the company was formed on [redacted] 2021, approximately 16 months prior to this petition's date of filing, which took place in January 2023. *See* https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=[redacted] (last accessed May 8, 2024).

In addressing the national importance element of *Dhanasar's* first prong, the Director made other vague references to the proposed endeavor, stating that the Petitioner intends to "start a company in the U[.]S[.] . . . and [] continue to manage a company." Even though the Petitioner provided a business plan and supplemental statements, as the Director acknowledged, the denial does not include an analysis of these documents, which discuss the Petitioner's endeavor in greater detail and offer a more comprehensive understanding of the environmental concerns the endeavor seeks to address.

As the Petitioner states on appeal, the Director "generally referred to and disregarded" evidence that the Petitioner submitted to specifically address the national importance element. Instead, the Director pointed out that evidence such as "articles about the industry" and information about trade fairs is not relevant in this case. While true that more general items will not establish national importance, the Director did not discuss the more specific materials submitted and whether they do or do not establish national importance. The Director went on to explain how the Petitioner's training certificates, membership in a professional group, and publications about the Petitioner also fall short of demonstrating national importance, even though the record indicates that these documents were not submitted to address the national importance element.

The Petitioner also submitted a business plan that includes a five-year hiring timeline listing the position titles and number of employees the Petitioner intends to hire during his company's first five years of operation. However, it is not clear that the Director fully analyzed the plan, as he determined that the Petitioner "has not offered sufficient information to illustrate the number of individuals the beneficiary's business plans to hire, train and support." If the business plan itself is deficient, the Director should highlight the deficiency to explain how that evidence does not meet the national importance standard. We note, for instance, that while the Petitioner's business plan contains staffing and revenue projections, it does not adequately establish that his company would result in national implications for the environment or the U.S. economy.

In light of the above, we conclude that the record contains sufficient documentation establishing that the Petitioner adequately described his endeavor; the Director's finding to the contrary was therefore incorrect and leads us to question whether the Director properly and fully considered the proposed endeavor and the supporting evidence offered to address the *Dhanasar* requirements. Because the Director incorrectly assessed the Petitioner's endeavor and offered an incomplete discussion of the supporting evidence concerning 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) his endeavor has substantial merit and national importance, (2) he 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 analysis was deficient, we remand for the Director to properly apply the *Dhanasar* framework to the facts in the record, and 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.