U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34798070

Date: NOV. 22, 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 that although the Petitioner demonstrated her eligibility for the requested EB-2 classification, 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). 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 decision lacks analysis and discussion of the evidence in the record and reaches conclusory findings. Additionally, the appellate record is incomplete and, therefore, not ripe for review. Accordingly, 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 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. Our precedent decision in *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 Third, Ninth, Eleventh, and D.C. Circuit Courts 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.

In evaluating the Petitioner's request for a national interest waiver, the Director concluded that the Petitioner had not established her proposed endeavor's national importance, that she is well positioned to advance the endeavor, or that, on balance it would be beneficial to the United States to waive the job offer requirements. On appeal, the Petitioner contends, among other things, that the Director did not properly discuss the evidence or explain the rationale underlying their determination. We agree.

An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g.*, *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's decision did not meet these requirements.

With regard to *Dhanasar's* first prong, the Director identified the Petitioner's proposed endeavor as "a Researcher in the field of Nutrition" and determined that the endeavor had substantial merit but not national importance. The Director, however, did not meaningfully address or analyze any of the Petitioner's evidence. Instead, the Director concluded that the "multiple articles, studies, and reports" submitted by the Petitioner did not demonstrate national importance "as there is no significant potential to employ U.S. workers or ha[ve] other substantial positive economic effects, particularly in an economically depressed area." The decision provides no analysis explaining how the Director reached this determination.

Additionally, as raised by the Petitioner on appeal, a proposed endeavor's economic impact is but one consideration under the *Dhanasar's* first prong. In *Dhanasar*, we stated that, in determining national importance, we consider the proposed endeavor's "potential prospective impact" and "look for broader implications," noting that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Matter of Dhanasar*, 26 I&N Dec. at 889. Such broader implications, or lack thereof, were not discussed. And while the record may ultimately be insufficient to demonstrate the Petitioner's eligibility under this prong, the Director's decision did not adequately address the evidence or provide sufficient analysis to support its determination.

Moreover, the appellate record is not complete for our review. The Petitioner's October 16, 2023, letter includes a list of exhibits submitted with the petition. However, since Exhibits 8 through 29 are not contained within the appellate record, we are unable to review them.[2] While this impedes our ability to review all of the *Dhanasar* prongs to a degree, it creates particular problems in our appellate review of the Director's determination of the second prong, as many of these exhibits relate to the

[2] While it appears some of these documents may have been resubmitted in subsequent filings, many of the documents are not contained in the appellate record before us.

Petitioner's past work and whether she demonstrated that she is well positioned to advance her proposed endeavor. Accordingly, the appellate record is not ripe for review.

Because a new first-line adjudication of *Dhanasar's* first prong is required and we cannot meaningfully analyze the second prong because the appellate record is incomplete, we likewise are unable to conduct a review of the third prong at this time.

On remand, the Director should ensure the record is complete. The Director should then evaluate the evidence of record and articulate whether that evidence establishes the Petitioner's eligibility for a national interest waiver. If the Director concludes that the Petitioner's evidence does not meet a specific eligibility requirement, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision. In remanding, we express no opinion as to the ultimate resolution of this case.

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