U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29412333

Date: SEP. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an international legal consultant, 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 that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center revoked the approval of the petition,[1] concluding that although the record establishes the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree, she did not establish her eligibility for the requested national interest waiver. Specifically, the Director determined that the Petitioner did not establish, as required, that the prospective benefit of her proposed employment would be national in scope and would serve the national interest to a substantially greater degree compared to available United States workers having the same minimum qualifications. As such, the Director concluded that the petition had been approved in error.[2] The matter is now before us on appeal.[3] 8 C.F.R. § 103.3.

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[1] The Director previously issued a notice of revocation on March 16, 2021 and the Petitioner appealed that decision to our office. In a decision dated December 9, 2021, we remanded the matter to the Director with instructions to re-adjudicate the Petitioner's eligibility for a national interest waiver under the framework set forth in *Matter of New York State Dep't of Transp*. (*NYSDOT*), 22 I&N Dec. 215 (Acting Assoc. Comm'r 1998). We vacated our *NYSDOT* precedent decision in December 2016 and set forth a new framework for adjudicating national interest waiver petitions in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). The Director revoked the approval of the petition after determining that the Petitioner did not establish her eligibility for a national interest waiver under the three-prong *Dhanasar* framework. However, because this petition had been approved in May 2016 and was not pending with USCIS when *Dhanasar* was issued, the Petitioner must establish her eligibility under the previous *NYSDOT* framework.

[2] Section 205 of the Act states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." A director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

[3] The Petitioner's Form I-290B, Notice of Appeal or Motion, was initially assigned receipt number [redacted]. On July 26, 2023, we issued correspondence notifying the Petitioner that this had been changed to the current receipt number, [redacted]. This is an internal processing change only. Any further inquiry about this case should reference the current receipt number.

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.

On appeal, the Petitioner resubmits evidence and provides a statement on the Form I-290B, Notice of Appeal or Motion, in which she makes several allegations of error on the part of the Director and maintains that the approval of her petition was revoked without good and sufficient cause. Several of these allegations are not supported by the record. For example, she contends that Director made procedural errors because the revocation decision "did not follow" our remand decision issued in December 2021 and "went beyond what is stated in the [Notice of Intent to Revoke (NOIR)]." The record reflects that we instructed the Director to re-adjudicate the petition under the *NYSDOT* framework and the Director did so. The Petitioner has not articulated how the Director failed to follow our instructions on remand or elaborated on her claim that the Director raised issues in the revocation without providing notice in the NOIR. The record indicates that the Petitioner had notice of the proposed grounds for revocation and an adequate opportunity for rebuttal.

The Petitioner further claims that the Director "wrongly indicated" that she submitted a late response to the NOIR, but the revocation decision expressly states her response was "considered as timely received." Additionally, she contends that the Director did not judge her case "by its own merits" because no consideration was given to her previously approved labor certification and her long-time maintenance of lawful status in the United States. However, the Director acknowledged and discussed these facts in the revocation decision and correctly determined that they are not relevant in evaluating the Petitioner's eligibility for a national interest waiver under the *NYSDOT* framework, which focuses on the prospective benefit of her proposed employment and whether it would be national in scope and serve the national interest.

The Petitioner also maintains that the Director did not consider all evidence submitted in response to the NOIR, specifically referring to her submission of 25 supporting letters, which are resubmitted on appeal. While the Director did not specifically address each letter, the decision states that evidence not discussed was nevertheless reviewed and considered. We note the letters from the Petitioner's employers, colleagues and former professors were similar in substance, and the Director was not obligated to provide a separate analysis of each one. It is a well-established principle that "a presumption of regularity attaches to the actions of Government agencies" absent clear evidence to the contrary. *See U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001) (citing *United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926)); *see also Martinez v. INS*, 970 F.2d 973, 976 (1st Cir. 1992) (finding that the Board of Immigration Appeals is not required to specifically address each claim the petitioner made or each piece of evidence presented); *Osuchukwu v. INS*, 744 F.2d 1136, 1142–43 (5th Cir. 1984) ("[The Board of Immigration Appeals] has no duty to write an exegesis on every contention").

Upon review of the record, we adopt and affirm the Director's decision. *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 that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As noted, the Petitioner must establish that her proposed employment is national in scope and would serve the national interest to a substantially greater degree compared to available U.S. workers. Under *NYSDOT*, a petitioner must establish that their past record justifies projections of future benefit to the national interest; the framework calls for a history of demonstrable achievement with some degree of influence on the field as a whole. 22 I&N Dec. at 219. The Director noted, and we agree, that the Petitioner's statements, and the supporting letters of her employers, colleagues, and former professors, describe her academic performance, employment history, her background as a licensed attorney in both the United States and her native Turkey, and her specific skills as an international legal consultant. However, the evidence does not demonstrate how the Petitioner's work to date has been national in scope by extending beyond her employers and their clients, or how it has resulted in demonstrable achievements in the field or been particularly influential in the field. While she is clearly well-regarded by her peers for her professional skills and personal attributes and has an unusual background compared to some U.S. attorneys based on her previous legal education and experience in Turkey, such background alone does not inherently meet the national interest threshold and does not demonstrate the substantial prospective national benefit of her employment.

The Petitioner's appeal does not address or contest the specific deficiencies the Director found in applying the *NYSDOT* framework to the facts presented, and therefore does not overcome the Director's thorough and well-reasoned determination that she did not establish her eligibility for a national interest waiver. Accordingly, we affirm the Director's decision to revoke the approval of the petition.

ORDER: The appeal is dismissed.