



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 27032783

Date: MAY 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a cognitive device and technology company, seeks employment-based second preference (EB-2) immigrant classification for the Beneficiary as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 record did not establish the national importance of the proposed endeavor. The Director dismissed the subsequent motion to reconsider, determining that it lacked a statement as to whether the unfavorable decision had been the subject of any judicial proceeding. See 8 C.F.R. § 103.5(a)(1)(iii)(C). Additionally, the Director determined the motion had not met the requirements of 8 C.F.R. § 103.5(a)(3) because the Petitioner had not identified how the decision incorrectly applied law or policy and was incorrect based on the evidence.

On appeal, the Petitioner asserts it already provided a statement fulfilling the requirement of 8 C.F.R. § 103.5(a)(1)(iii)(C), while also explaining such a statement is unnecessary and that requiring one is an incorrect interpretation of the regulation. Further, the Petitioner asserts its motion sufficiently identified how the decision contained errors, thereby meeting the requirements of 8 C.F.R. § 103.5(a)(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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. ANALYSIS

A. The Litigation Statement

The required statement on judicial proceedings under 8 C.F.R. § 103.5(a)(1)(iii)(C) is a procedural rule that helps U.S. Citizenship and Immigration Services (USCIS) identify those cases involving judicial proceedings so they can be held in abeyance pending the outcome of litigation involving the originally filed petition. See, e.g., Memorandum from Richard E. Norton, Assoc. Comm'r for Examinations, Immigration and Naturalization Service, Adjudication of Petitions and Applications which are in Litigation or Pending Appeal (Feb. 8, 1989).

The statement the Petitioner submitted with its appeal addresses the litigation statement issue. The Director did not have the opportunity to review this statement. Therefore, the Director may wish to determine, based upon the statement, whether the Petitioner has met the requirement at 8 C.F.R. § 103.5(a)(1)(iii)(C).

B. The Motion to Reconsider Statement

The Petitioner asserted the Director's decision to deny the petition contains numerous errors, including that the Director (1) did not provide a determination as to whether the Beneficiary qualified for the EB-2 classification and (2) failed to address specific documents or explain the basis for the conclusions reached. In support, the Petitioner cited to caselaw, the Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) precedent decision, and the Administrative Procedures Act at 5 U.S.C. §§ 701-706 (2012). The Petitioner also provided specific examples of information contained in the record that, based upon the contents of the decision, the Director appeared not to consider. While we agree that a petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with the Director's conclusions, we invite the Director to reevaluate whether the Petitioner's assertions of error were sufficiently specific to meet the requirements of a motion to reconsider. In so doing, the Director may wish to elaborate upon the explanations for the conclusions contained in the decision with a specificity sufficient such that one could conclude USCIS gave the petition reasoned consideration.

II. CONCLUSION

We withdraw the Director's decision and remand the matter for a new decision which addresses whether the Petitioner's motion satisfies the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3) and whether the Petitioner's appellate statements satisfy the requirements of 8 C.F.R. § 103.5(a)(1)(iii)(C) regarding litigation statements. We express no opinion regarding the ultimate resolution of this case on remand.

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