U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37337742

Date: APR. 01, 2025

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 had not established eligibility for the underlying immigrant classification. 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*. As initial evidence, the petition must be accompanied by letters from current or former employer(s) showing that a petitioner has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B). Further, regulation provides, in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the [individual] or the training received." 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, other documentation relating to a petitioner's experience will be considered. *Id.*

The record reflects that a bachelor's degree in business administration was conferred upon the Petitioner in January 2018 from [redacted] University in Brazil, his country of nationality. To support his assertion that he had the requisite five years of progressive experience in the specialty after

obtaining his degree, the Petitioner provided copies of "Digital Work Cards" issued by the Brazilian government, Brazilian income tax returns, and letters of recommendation of former colleagues. The Director issued a request for evidence (RFE) requesting additional documentation to support the Petitioner's experience. In response to the RFE, the Petitioner provided a brief, copies of the Brazilian Classifications of Occupations pages for his claimed positions, and information regarding the companies he worked for. After reviewing the evidence, the Director denied the petition, concluding that the Petitioner had not established by a preponderance of the evidence that he had at least five years of progressive post-baccalaureate experience in the specialty, as required. The Director's decision noted that the evidence submitted was insufficient, as it did not follow initial evidentiary requirements found in the regulations, and further did not reflect the Petitioner's experience, including dates of employment and specific duties.

On appeal, the Petitioner submits a brief, wherein he contends that the Director's analysis erred in "treating [his] documents as isolated pieces rather than recognizing that each document contributes to a comprehensive understanding of the case" and that the decision overlooked the "interdependencies among the documents which collectively elucidate the entire sequence of events." The Petitioner states that the "extensive collection of evidence submitted . . . comprises over 700 pages" and that he was only required to establish his eligibility by a preponderance of the evidence and again asserts that the Director failed to consider his evidence in the cumulative.

In our review of the underlying record, we note that the Petitioner claimed in his brief in response to the Director's RFE that, although the regulations outline the specific documents a petitioner should submit in support of his experience or training, that if "such evidence is unavailable, other documentation relating to the alien's experience or training will be considered," and stated that "it is necessary to acknowledge, respect, and recognize that for a variety of reasons, a Petitioner might not have access to [Human Resources] records such as specific letters[.]" However, the Petitioner, neither with his response to the RFE nor on appeal, has provided any explanation specifically as to why he has not provided the primary evidence noted by the regulations found at 8 C.F.R. § 204.5(g)(1) and (k)(3)(i)(B). Instead, he submitted alternative evidence, which he contends shows his experience as a whole; however, for the below reasons, we disagree.

The Brazilian Digital Work Cards are not issued by a specific employer, but rather by the Brazilian National Labor Ministry, and include a "Classification of Occupation" code, which relates to a generic description of duties composed by that governmental entity under a specific job title, but do not reflect a confirmation of the Petitioner's specific duties and experience in that position with that employer, as they are not issued by the employer. The Petitioner claims that the letters of recommendation provided with his petition supported his specific duties; however, our review of those letters does not reflect adequate information from each of the writers. The letters fail to provide specific dates of the writers' direct involvement with the Petitioner's work, and further do not include "the name, address, and title of the writer, and a specific description of the duties performed" as required. While they all include the name of the writer, many lack their title or business name, and none include the writers' address. For example, the letter from F-C-[1] stated that he and the Petitioner worked together "for 3.5 years (2016-2020)" and that they "were from different areas, but [they] had common goals." The letter from F-G- contains no specific dates but claims that the Petitioner joined a department of which

[1] We use initials to protect the identity of individuals.

they were a director. Although the letter from F-W-V- explains some of the Petitioner's specific projects and duties, it also only stated that they "have been working with [the Petitioner] since 2021." Similarly, the letter from M-C- stated that the Petitioner was promoted in May 2018, but does not provide further information regarding the amount of time worked with the Petitioner.

The Petitioner asserts that his Brazilian Digital Work Cards are "even more probative of the years of employment experience" since they are official government documents "used by various agencies to disburse and grant social security and unemployment benefits." He further claims that his tax returns from 2017 to 2023 reflect that he "was employed in progressively advanced positions, as evidenced by his increasing salaries." Again, although these reflect the companies he worked for, they lack the specific information from the companies themselves as required by the regulations. The Petitioner notes correctly that he is only required to establish his eligibility by a preponderance of the evidence, but we also note that the burden of proof to demonstrate his eligibility lies with him. As noted above, the Petitioner stated that he submitted "over 700 pages" of evidence and he also maintains that "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989). Here, the Petitioner has not presented sufficient probative evidence to establish his experience. Further, he has not provided an explanation as to why he was unable to obtain the primary initial evidence required by 8 C.F.R. § 204.5(k)(3)(i)(B), only mentioning in the response to the RFE that "for a variety of reasons" a petitioner may not be able to obtain such evidence.

Although the Petitioner claims that his Brazilian Digital Work Cards should be viewed as more credible than "traditional documentation like letters of recommendation or self-generated employment verification letters" and that letters from employers "sometimes lack the same level of verification" and such letters from employers "may be viewed with skepticism if they do not come from recognized authorities or lack specific details" about a petitioner's role and contributions. However, the regulation requires that the petition must be accompanied by letters from current or former employer(s) showing that a petitioner has at least five years of progressive post-baccalaureate experience in the specialty. *Id.* The Digital Work Cards only present specific dates and titles reported, but do not include specific roles and responsibilities that the Petitioner had during his employment, and the associated letters provided did not include sufficient details as to the dates of the Petitioner's employment or his roles and responsibilities. As such, we conclude that the Petitioner has not established his eligibility for the second preference immigrant classification as a member of the professions holding an advanced degree.

Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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.