U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30556542

Date: APR. 02, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a computer network and maintenance technician, seeks employment-based second preference (EB-2) immigrant classification 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 that the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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[3], 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. EB-2 IMMIGRANT CLASSIFICATION

A. Member of the Professions Holding an Advanced Degree

The Petitioner claimed eligibility for the EB-2 classification only as an individual of exceptional ability. However, when issuing their request for evidence (RFE), the Director stated that the Petitioner had established eligibility as a member of the professions holding an advanced degree, thus making a determination of whether he qualified as an individual of exceptional ability unnecessary. Per the discussion below, we disagree with the Director's statement in the RFE, and remand this matter for their reconsideration of the Petitioner's eligibility for the EB-2 classification.[4]

In their RFE, the Director referenced the Petitioner's "academic record from [redacted] where he obtained his bachelor's degree in computer networks and master's degree (incomplete) in Business Administration" as establishing his eligibility for the EB2 classification as a member of the professions holding an advanced degree. But there are multiple errors of fact in this statement, beginning with the names of the institutions where the Petitioner studied. Also, the certified translation of the Petitioner's diploma from the [redacted] includes an error that the Director incorporated in their statement, translating the title of the awarded degree program, "Curso Superior de Formacao Especifica," to "Bachelor's Degree." Although the Petitioner repeats this claim

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *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 is discretionary in nature).

[4] As the Director did not include a determination of the Petitioner's eligibility for the EB-2 classification in their decision, there is no final decision on this issue for us to withdraw.

throughout his petition, the credential evaluation submitted by the Petitioner states that the Petitioner earned a "Technologist Diploma for the completion of the Higher Course of Specific Training in Computer Networks" from this institution, not a bachelor's degree. Further, the evaluation does not suggest that this degree is equivalent to a bachelor's degree, whether issued from an institution in Brazil or the United States.

Turning to the "master's degree (incomplete) in Business Administration," we note that while the Petitioner completed Part 11 of Form ETA-750B, Application for Alien Employment Certification, with this information, he also included a lengthy explanation of why he never received a diploma from the [redacted] after nearly completing his studies. In addition, the transcripts from this institution indicate that the Petitioner's studies were in a *latu sensu* program, not a master's degree program.[5] Further, the credential evaluation makes no mention of his studies in this program when evaluating his education. The Petitioner has not established that almost completing a *latu sensu* program is equivalent to holding an advanced degree from an accredited college or university in the United States. As the record does not show that the Petitioner holds a U.S. degree above baccalaureate, or a foreign equivalent degree, the Director erred in stating that he is eligible as a member of the professions holding an advanced degree based solely on the evidence of his education.

As noted above, a petitioner may also establish eligibility as an advanced degree professional through evidence of a United States bachelor's degree, or a foreign equivalent degree, and five years of progressive, post-baccalaureate work experience in their field. Here, while the credential evaluation ultimately concludes that the Petitioner has the U.S. equivalent of a Master of Science degree in information systems, it does so by combining education that has not been shown to be equivalent to a bachelor's degree with multiple years of work experience. We may reject or give lesser evidentiary weight to credential evaluations inconsistent with the record or "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). The three-for-one formula cited by the evaluation applies only to H-1B nonimmigrant visa petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (describing a U.S. baccalaureate equivalency for H-1B purposes). The record therefore does not establish the Petitioner's possession of a baccalaureate equivalency, and he cannot qualify as a member of the professions holding an advanced degree.

B. Individual of Exceptional Ability

As mentioned above, the Petitioner based his claim of eligibility for the EB-2 classification on his qualification as an individual of exceptional ability, and submitted evidence under all six of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). On remand, the Director should review the evidence submitted to determine if the Petitioner meets at least three of those criteria, and if so conduct a final merits determination of the totality of the record to determine whether the Petitioner has established that he is recognized as having a degree of expertise significantly above that ordinarily encountered in his field. Because the Director's previous RFE did not address the insufficiencies in

[5] We reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge. It contains extensive information regarding the Brazilian educational system, including *latu sensu* certificates. The database states that *lato sensu* programs are for professional development and specialization, and lead toward professional certificates instead of academic graduate degrees.

the evidence initially presented under these evidentiary criteria and therefore did not provide the Petitioner an opportunity to respond, they should issue a new RFE if they determine that the record does not show that the Petitioner meets at least three of the evidentiary criteria.

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to offer information technology (IT) consulting services through his own company, [redacted] located in Florida. His endeavor would involve owning and managing this business, which will provide services such as IT management consulting, server deployment, network infrastructure installation, cybersecurity, and training services for technical support.

A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, concerning the substantial merit and national importance of the proposed endeavor, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In their decision, the Director determined that the Petitioner's proposed endeavor is of substantial merit. Based upon the business plan for [redacted] and other supporting documentation, we conclude that the proposed endeavor is of substantial merit in the areas of business and technology.

For the second part of their decision regarding the first prong of the *Dhanasar* framework, the Director concluded that the Petitioner did not demonstrate that his proposed endeavor is of national importance. However, the Director's analysis of national importance relies upon elements from the third prong of the framework, in which we determine whether, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. For example, immediately after concluding that the proposed endeavor does not national importance, the Director states that the Petitioner has not established that "it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification," and goes on to list several third prong factors from the precedent decision.

Later in the decision, under the bulleted heading "National importance," the Director initially (and correctly) explains that the focus of a national importance analysis under the *Dhanasar* framework is the specific proposed endeavor, not the field or industry in which a petitioner proposes to work. However, they then go on to conduct an analysis of whether the Petitioner is well positioned to advance his proposed endeavor, which falls under the second prong of the framework.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(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). Here, the Director has not explained the reasons behind their conclusion that the Petitioner's proposed endeavor is not of national importance.

In addition, we note that when issuing their RFE, the Director stated that the evidence of the Petitioner's education and experience was sufficient to establish that he was well positioned to advance his endeavor, and thus met the second prong of the *Dhanasar* framework. However, the Director then reached the opposite conclusion in their decision.

On remand, the Director should evaluate the record, including the materials provided with the appeal, and provide a clear and coherent analysis of the Petitioner's eligibility for a national interest waiver per the *Dhanasar* analytical framework and related USCIS policy guidance.

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