U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30586335

Date: APR. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference ((EB-2) immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for classification as an employment based second preference permanent immigrant and a discretionary waiver of the job offer requirement, and thus a labor certification was not merited upon the application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest, but only if a petitioner categorically establishes eligibility in the EB-2 classification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R. § 204.5(g)(1) requires letters from current or former employers include the name, address, and title of the writer, and a specific description of the duties performed.

If we conclude that a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, *see supra*. *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The evidence the Petitioner submitted into the record does not sufficiently establish the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree. As stated previously, the regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree to mean any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree and so permit classification as an EB-2 permanent immigrant. Progressive experience can be demonstrated by the Petitioner by providing letters from current or former employers showing that they have at least five years of progressive post-baccalaureate experience in the specialty. The regulation at 8 C.F.R. § 204.5(g)(1) requires letters from current or former employers include the name, address, and title of the writer, and a specific description of the duties performed.

The Petitioner has not submitted adequate documentation to demonstrate that they have accumulated at least five years of progressive post-baccalaureate work experience. In support of their progressive and ostensibly post-baccalaureate work experience, the Petitioner submitted evidence in the form of work certificates, resignation letters, and proof of employment letters from various employers the Petitioner worked for. But the letters did not contain the specific description of the duties performed as required by the regulation. In response to the request for evidence (RFE), the Petitioner submitted one new letter from an employer they served in the position of president which also did not contain a specific description of the duties performed. They also submitted a document describing the various positions the Petitioner held at various employers of unknown source or origin that was not printed on

letterhead, dated, or signed. The omission of a specific description of duties performed in the work certificates, resignation letters, and proof of employment letters the Petitioner submitted curtails our ability to evaluate whether the work experience the Petitioner presents is progressively responsible. Consequently, we are unable to determine if the Petitioner's post-baccalaureate periods of work render them eligible for classification as an advanced degree professional.

Additionally, we agree with the Director that the record contains insufficient evidence to determine whether the Petitioner's "degree of food engineer" as described in the translation accompanying their foreign language degree certificate is the single source equivalent of a U.S. bachelor's degree. The Petitioner submitted a degree certificate reflecting that they purportedly finished a "degree of food engineer" from [redacted] on October 23, 1987. The Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), reflects that engineering degrees earned at accredited institutions of higher education in Venezuela are the single source equivalent to a United States bachelor's degree if they are of either five or six years in duration. The Petitioner asserts that their degree certificate is a sufficient academic record to satisfy the requirements of 8 C.F.R. § 204.5(k)(3) and demonstrate they have earned the single source foreign equivalent of a United States baccalaureate degree in food engineering. But the degree certificate the Petitioner submitted does not show how many years in duration the Petitioner's course of study was. The Director issued an RFE and requested the Petitioner submit an academic transcript, but the Petitioner did not submit the requested transcript in response to the RFE. So, we are not able to determine the duration of the Petitioner's "degree of food engineer" course.

And the educational evaluation the Petitioner submitted from [redacted] pursuant to a request from [redacted] for a "document-by-document" evaluation of the Petitioner's academic credentials from Venezuela is not sufficiently probative to demonstrate the Petitioner's "degree of food engineer" is the single source equivalent of a U.S. bachelor's degree. The evaluation concludes the Petitioner earned the foreign equivalent of a U.S. "degree of Bachelor of Science in Food Science and Technology." And the evaluation states the Petitioner completed a "five-year undergraduate program." But the evaluator does not identify the documents they examined in preparing the evaluation. For example, whilst the evaluation generally refers to "official academic credentials" as the basis for its conclusions, it does not identify what those "official academic credentials" are and does not explain how the evaluator was able to determine the duration of the Petitioner's program of study from them. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). But the evaluation the Petitioner submitted draws conclusions about the duration of the Petitioner's educational course which are unsupported in the record. And the duration of the Petitioner's course of study is directly relevant to whether it is the single source equivalent to the U.S. degree the Petitioner says it is. So, the evaluation is not of sufficiently relevant, material, or probative value to evaluating if the Petitioner's claimed educational credential is an advanced degree or its single source foreign equivalent.

We are unable to determine if the Petitioner has earned the single source equivalent to a U.S. bachelor's degree. And the record as it is currently composed does not contain sufficient relevant, material, or probative evidence to demonstrate the Petitioner has earned a U.S. master's degree or its single source foreign equivalent or accrued at least five years of progressive post-baccalaureate

experience after attaining a U.S. bachelor's degree or its single source foreign equivalent. So, we conclude the Petitioner has not demonstrated eligibility for classification in the employment based second preference permanent immigrant as an advanced degree professional.

III. CONCLUSION

The Petitioner has not adequately established categorical eligibility as an advanced degree professional.[1] Without the Petitioner's demonstration of the predicate employment based second preference permanent immigrant categorical eligibility, we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[1] The Petitioner did not claim, and the record does not contain sufficient evidence of, the Petitioner's eligibility for the employment based second preference permanent immigrant category as an individual of exceptional ability.