U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30624749

Date: APR. 25, 2024

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. 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 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.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement "in the national interest." The matter is now before us on appeal. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.[1] 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[2] 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.

Id. at 889.

II. ANALYSIS

For the underlying EB-2 immigrant classification, the Petitioner claims to be an advanced degree professional having earned the foreign equivalent of a U.S. baccalaureate degree and having over five years of progressive experience in her indicated specialty. In denying the petition, the Director determined that although the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in nursing, she did not establish that she has five years of progressive post-baccalaureate experience in her intended occupation, a nurse practitioner. Upon de novo review, we agree with the Director's determination that the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional.[3]

On appeal, the Petitioner argues that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law . . . ." (emphasis omitted). The appeal brief acknowledges the Director denying her eligibility for the underlying EB-2 classification, however, does not provide an argument for why the Director's determination is incorrect. Instead, the Petitioner's brief generally argues the Director made an erroneous decision and focuses her arguments on her eligibility for the national interest waiver.

Initially, the Petitioner provided conflicting descriptions of her proposed endeavor. Her petition states her intended job title would be "nurse practitioner" with the duties and responsibilities for SOC Code 29-1171 occupation,

> Diagnose and treat acute, episodic, or chronic illness, independently or as part of a heathcare team. May focus on health promotion and disease prevention. May order, perform, or interpret diagnostic tests such as lab work and x rays. May

[2] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

prescribe medication. Must be registered nurses who have specialized graduate education.

See U.S. Department of Labor, O*NET Summary Report for "Nurse Practitioners," https://www.onetonline.org/link/summary/29-1171.00. However, in the Petitioner's initial professional plan and statement, she indicates her intention to work as a nurse stating that "[m]y career plan in the United States is to work with a health care facility to provide expert nursing advice and treatment to patients. My career working with a wide array of patient injuries and illnesses, will be beneficial to the U.S. health industry, which is currently experiencing a severe shortage of nurses." Much of the initial supporting evidence, including counsel's letter, articles, reports, an opinion letter, and recommendation letters support the Petitioner's statement that she intends to work as a nurse.

In response to a request for evidence notice, the Petitioner submitted a new professional plan and statement to clarify her proposed endeavor stating that "[t]o advance my proposed endeavor in the United States, I intend to continue using my expertise and knowledge in the medical field by working as a Nurse Practitioner in the field of Nursing and offering my expertise to clinics and hospitals to help improve their resources management and/or patient care in the United States." (emphasis omitted). With her updated statement, her counsel's letter also repeatedly references the Petitioner's intention to work as a nurse practitioner in the field of nursing. On appeal, the Petitioner restates her proposed endeavor is "to offer her expertise as a Nurse Practitioner in the field of Nursing." (emphasis omitted).

The record demonstrates that the Petitioner has the foreign equivalent of a U.S. bachelor's degree in nursing. However, we agree with the Director that the Petitioner has not demonstrated that she has at least five years of progressive post-baccalaureate experience in her indicated specialty as a nurse practitioner. Instead of having experience as a nurse practitioner, the evidence shows that the Petitioner has experience as a nurse, an assistant nurse, and a technical manager. For instance, employment letters show her work experience as a nurse with [redacted] and [redacted] as a technical manager with [redacted] and as an assistant nurse with [redacted] Her job duties for these positions do not indicate she has experience for her intended specialty, nurse practitioner, as stated in her petition.

The record includes additional letters verifying the Petitioner's employment as a nurse with [redacted] and as a nursing technician with [redacted] However, because these letters do not include the Petitioner's job duties, we are unable to determine whether her work included the job duties of a nurse practitioner. She submitted additional letters relating to her work as a nurse with [redacted] and [redacted] However, in addition to the letters not stating her job duties, the letters indicate her work was performed after the date of filing the petition. This additional evidence presents facts that did not exist at the time of filing the petition. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, we will not consider the letters showing her work experience after the date of filing the petition.

III. CONCLUSION

The Petitioner has not established her qualification for the EB-2 classification as a member of the professions holding an advanced degree and is therefore ineligible for a national interest waiver. While

the Petitioner asserts on appeal that she meets all three of the prongs under the Dhanasar analytical framework, we reserve our opinion regarding these issues. 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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.