U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30626557

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 record did not establish that the Petitioner 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

The Petitioner proposes to work as an entrepreneur by establishing and managing a special education business for children. The Petitioner indicates the aim of the business is to teach and provide services to children with learning disabilities for quality of life and inclusion through the work of professionals in the fields of health, education, speech therapy, physiotherapy, psychology, and occupational therapy.

The Director determined that the Petitioner did not establish that she is eligible for the underlying EB-2 classification as an advanced degree professional. In addition, the Director determined that the Petitioner is not eligible for the waiver of the job offer requirement in the national interest. Although the record shows the substantial merit of the Petitioner's proposed endeavor, the Director found the Petitioner did not demonstrate its national importance under the first prong of Dhanasar*'s* analytical framework, or that, on balance, waiving the job offer requirement would benefit the United States under *Dhanasar's* third prong. The Director did not address whether the Petitioner is well-positioned to advance the proposed endeavor under *Dhanasar's* second prong. Upon de novo review, we agree with the Director's determination that the Petitioner has not established eligibility for the underlying EB-2 classification.[3]

The Petitioner claims to qualify for the EB-2 classification as a member of the professions holding an advanced degree based on obtaining the foreign equivalent of a U.S. bachelor's degree followed by at least five years of progressive experience in the specialty.[4] 8 C.F.R. § 204.5(k)(2). The Director determined that although the record shows that the Petitioner holds the foreign equivalent of a U.S.

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[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.

[4] The Petitioner does not argue or claim eligibility for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

bachelor's degree in administration with a business management concentration, the record does not show that she has five years of progressive post-baccalaureate experience in the specialty.

On appeal, the Petitioner disagrees with the Director's analysis of the evidence relating to her work experience. She argues that the documentation shows her more than five years of entrepreneurship experience through her ownership and management of businesses in Brazil.

To document her work history, the Petitioner submitted corporate and tax documents relating to her ownership of two businesses in Brazil, and an affidavit attesting to her prior work experience as a marketing coordinator. One of her businesses is described as providing services for building and home cleaning; landscaping; swimming pool maintenance and security; building doormen; and building support services. The Petitioner's other business is described as providing the manufacture and sale of dietetic foods and food supplements, and retail trade of clothing, accessories, sporting goods, and food supplements.

Although the corporate documents indicate the Petitioner as a shareholder and partner for the businesses, they do not show her job duties relate to her indicated specialty. Here, the Petitioner proposes to establish and manage a special education business for children with learning disabilities, whereas the businesses she relies on for her progressive experience are not related to this specialty. The Petitioner has not established how her experience as the owner of businesses providing building maintenance and the manufacture and sale of food supplements and other goods is related to the specialty of special education for children.

We further note that although the corporate and tax documents show the Petitioner owned shares in the businesses and had responsibilities for administration of a business partnership, they do not demonstrate her job duties of managing the businesses. The Petitioner argues on appeal that her management and entrepreneurship experience with the businesses are evidenced in two letters from her clients of the food supplement business. Although the letters attest to the Petitioner's work with developing, marketing, and sale of food supplements for the business' clients, they do not show her management of the business. On appeal, the Petitioner submitted "simplified digital certificates" to show her management experience for her businesses. She emphasizes that the certificates "are not mere administrative formalities[,]" but instead evidence her active role as a "hands-on manager deeply involved in the day-to-day operations and decision-making processes." However, the certificates indicate the Petitioner as an owner and administrator for the businesses, but do not indicate her management of the business. The Petitioner's statements must be supported by independent, probative evidence. Assertions made without supporting documentation are of limited probative value and do not carry weight sufficient to satisfy the Petitioner's burden of proof. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r 1998).

In addition to her experience with her businesses in Brazil, the record includes two affidavits relating to her former employment in marketing. An affidavit from a human resources analyst attests to the Petitioner's employment as a marketing coordinator from February 1, 2012, to December 8, 2013. However, the affidavit does not indicate experience in her specialty, establishing and managing a special education business for children. The second affidavit states that the Petitioner worked as a marketing assistant from September 8, 2009, to September 1, 2011. However, this experience was

prior to the Petitioner attaining her degree in 2012, and therefore does not qualify as post-baccalaureate experience.

Because the Petitioner has not demonstrated that she possesses at least five years of post-baccalaureate progressive experience in the specialty, the Petitioner does not qualify as an advanced degree professional. Having determined that the Petitioner does not qualify as an advanced degree professional, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that she meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether she is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. 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).

III. CONCLUSION

The Petitioner has not established that she qualifies for a second-preference employment visa as a member of the professions holding an advanced degree. Therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.