U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31659680

Date: AUG. 01, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a consultant, 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 that the record did not establish that the Petitioner qualified for the visa classification as a member of the professions holding an advanced degree. 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 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. 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. 8 C.F.R. § 204.5(k)(2).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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,[1] 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.*

## II. ANALYSIS

### A. Advanced Degree

The Petitioner asserts that she qualifies for an advanced degree professional classification by virtue of foreign education she claims is equivalent to a U.S. bachelor's degree, along with five years of progressive experience.[2] 8 C.F.R. § 204.5(k)(3)(i). The Director determined that the Petitioner did not submit sufficient evidence to establish that she is a member of the professions holding an advanced degree. Upon de novo review of the record, we agree that the Petitioner has not demonstrated that she is an advanced degree professional.

In order to show that a petitioner qualifies as holding a U.S. bachelor's degree plus five years of progressive experience, a petitioner must provide "an official academic record showing that the [petitioner] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [petitioner] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(B).

To establish her eligibility for the classification the Petitioner submitted a diploma showing that she received a degree in industrial engineering, as well as a degree certificate, an honorable mention certificate, an evaluation of educational credentials from [redacted], and a letter from her former employer.[3] However, she did not provide an academic record for her degree in industrial engineering.

The Petitioner asserts on appeal that she submitted sufficient evidence for the classification but does not address the lack of academic record for the Petitioner's degree. The Petitioner avers that the educational evaluation establishes that her degree is equivalent to a U.S. bachelor's degree. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of*

[1] *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 is discretionary in nature).

[2] The Petitioner does not claim to be an individual of extraordinary ability.

[3] The Director found that the Petitioner did not submit the required letter(s) from current or former employers to establish five years of work experience. We observe that the Petitioner submitted a letter confirming her employment with [redacted] in response to the request for evidence (RFE). However, we note that the letter states that she was an Assistant Manager from 2004 to 2021, while the curriculum vitae submitted with the initial petition states that the Petitioner was a Manager at the company from 2002 to 2008. The Petitioner should resolve the inconsistency in any subsequent filings. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies should be resolved with independent, objective evidence pointing to where the truth lies).

*Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). Nonetheless, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here the advisory opinion is of little probative value as it summarily concludes that the Petitioner's degree is the equivalent of a U.S. bachelor's degree without any analysis or explanation. Moreover, she still lacks the required academic record.

Therefore, the Petitioner has not established that she is an advanced degree professional in accordance with 8 C.F.R. § 204.5(k)(3)(i). As the Petitioner has not shown that she is as an advanced degree professional, and she has not asserted that she is an individual of exceptional ability, the documentation in the record does not establish eligibility for the underlying EB-2 classification.

B. National Interest Waiver

As the Petitioner has not established eligibility for the EB-2 visa classification, she is ineligible for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 as a member of the professions holding an advanced degree, or that she is otherwise eligible for the underlying EB-2 immigrant visa classification. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.