U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32542735

Date: AUG. 02, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualified as a professional with an advanced degree, individual with a bachelor's degree and five years of progressive experience or a person of exceptional ability. The director additionally found that the petitioner did not meet the requirements for a waiver of the job offer and labor certification requirements for EB-2 classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner states that she provided evidence of her master's degree from Brazil and that the Director did not apply the appropriate standard of proof when reviewing the evidence.

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).

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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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,[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.

Id.

II. ANALYSIS

The Petitioner, a citizen and national of Brazil currently residing in the United States, proposed to open a sport nutrition retail enterprise in the United States. The Director determined that the Petitioner had not demonstrated that she is a member of the professions holding an advanced degree or an individual of exceptional ability. The Director further determined that the Petitioner's proposed endeavor did not meet any of the three criteria in the *Dhanasar* framework. On Appeal, the Petitioner alleges that the Director did not use the appropriate standard of proof or consider the evidence provided in support of the petition. Upon de novo review, we will withdraw the Director's decision, in part, but dismiss the appeal.

A. Advanced Degree Professional

The Director concluded that the Petitioner did not qualify as a member of the professions holding an advanced degree. The Petitioner asserts that she completed a Master of Business Administration (MBA) program and post graduate studies in International Relations. As evidence of completion of

[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 individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *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).

the MBA program the Petitioner provided a copy of a certificate for an "executive MBA" course provided by [redacted] The Petitioner did not provide sufficient evidence that [redacted] is an accredited educational institution or that the completion of the program is the foreign equivalent of a U.S. master's degree.

The Petitioner also provided a copy of a certificate of completion for a specialization course in "Contemporary International Relations: Actors and Processes" with a list of lectures completed from the [redacted] She argues that this certificate is the equivalent of a U.S. Master's degree program.

Information from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) supports the evaluation, stating that:[4]

> The *3-year Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The *4-* or *5-year Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

EDGE also indicates that:

> Professional development and specialization programs are considered *lato sensus*/ wide sense graduate level programs and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees. They require 1 to 2 or 3 years of study.

The Petitioner received a "Certificate of the Lato Sensu Graduation Course" from the Central Office of Continuing Education at [redacted] As described above, a Latu Sensu certificate is not the equivalent of a U.S. Master's degree unless later accepted by a graduate studies program. The Petitioner did not provide evidence that the courses completed in international relations were later transferred into a master's degree program. Despite her claims on appeal, the Petitioner did not submit evidence of an equivalency evaluation for any of her post-graduate course work and has not provided any additional evidence to support her claims that these courses constitute the equivalent of a U.S. Master's degree. Therefore, the Petitioner has not established that she has the equivalent of a U.S. post-graduate degree.

The Director determined that the Petitioner's undergraduate diploma was not the equivalent of a 4-year bachelor's degree in the United States. On appeal, the Petitioner argues that the Director erred in finding that her diploma was not the equivalent of a U.S. degree. The Director equated the Petitioner's diploma to a "Certificado de Conclusao de Curso Sequencial" that is issued for the completion of individual courses potentially leading to a degree. However, the Diploma provided by the Petitioner

[4] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). *See* https://www.aacrao.org/edge/country/brazil for information regarding the education system in Brazil and credential equivalencies (last accessed May 25, 2023).

indicates that it was issued to confer a "titulo de Bacharel em Comunicacao Social." In addition to the Diploma, the Petitioner provided a transcript showing the completion of 194 credit hours between 1994 and 1999. The evaluation from Morningside Evaluations supports the Petitioner's contentions that the course work completed during her nearly 5 years of study culminated in the qualification for her degree in 2002 and is the equivalent of a four-year Bachelor of Science degree in the United States. Therefore, we withdraw the Director's determination as it relates to the Petitioner's undergraduate degree.

Since the Petitioner has established that she has the equivalent of a U.S. bachelor's degree she must also establish five years of progressive experience in her field. 8 C.F.R. § 204.5(k)(2). As evidence to satisfy this requirement, the Petitioner provided her resume and multiple letters of support. A letter from C-M-[5] of [redacted] states that the Petitioner worked in the advisory and communication department between August 1999 and October 2003. The Petitioner's diploma was issued in 2002 and only work experience after the date of qualification may be considered relevant to this requirement. A second letter from M-C- states that the Petitioner worked as a consultant for the [redacted] between July 2015 and July 2018. However, this letter did not contain a description of the Petitioner's duties or provide sufficient insight into the work she completed to demonstrate that it relates to her degree in communications or constitutes progressive experience in her specialty. A letter from H-F-T- states he also worked with the Petitioner at [redacted] and describes a few of her projects but did not provide sufficient detail of her day-to-day duties or demonstrate how the projects she worked on relate to her field of study. The remaining letters of support are not from current or former employers but colleagues or friends familiar with the Petitioner's work history. As these letters are not from current or past employers, they do not meet the regulatory requirements of 8 C.F.R. § 204.5(k)(3)(i)(B) and are not sufficient to establish the Petitioner's progressive experience in her field. The Petitioner makes a passing reference on appeal to her entrepreneurial journey over the course of 20 years but fails to provide any supporting sections of law or regulation that would stand for the premise that the Petitioner may submit their own letter of support regarding their past employment to meet this regulatory requirement. *See Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). Accordingly, the Petitioner has not established the regulatory requirements to be considered a professional with an advanced degree.

B. Exceptional Ability

The Director further provided an analysis of the six criteria necessary to be considered an individual of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Petitioner does not claim to be an individual of exceptional ability on appeal or rebut the findings of the Director as it relates to the regulatory requirements above. Therefore, we deem the matter waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

III. CONCLUSION

[5] We use initials to protect the privacy of individuals.

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. As the above stated grounds are dispositive of the Petitioner's appeal, we need not reach, and therefore reserve, the Petitioner's arguments related to her suitability for a national interest waiver 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 the applicant did not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.