U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33390690

Date: AUGUST 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a lawyer, 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 the Petitioner did not qualify for EB-2 classification as a member of the professions holding an advanced degree. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify for 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.

The Act defines the term "profession" to "include but not be limited to … lawyers…." Section 101(a)(32) of the Act. The EB-2 regulations further define "profession" to mean "any of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). Mere possession of an advanced degree or its equivalent is not sufficient for establishing a beneficiary's eligibility for this classification. *See* 6 *USCIS Policy Manual* F.5(A)(3), https://www.uscis.gov/policy-manual (providing guidance that a petitioner must demonstrate that the position, and the industry as a whole, normally requires that the position be filled by a person holding an advanced degree).

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.

II. ANALYSIS

In her business plan, the Petitioner states she will establish an environmental consulting company offering services in environmental law and environmental, social and governance solutions and act as the chief executive officer (CEO) of the company. The Petitioner explains the company will provide "comprehensive legal advice on environmental issues."

The Petitioner submitted evidence that she holds the United States equivalent of a master's degree in law. The Director determined the Petitioner did not qualify for classification as an advanced degree professional because her degree was in law and did not align with her proposed endeavor to be the CEO of her company. The Director cited information from the Occupational Outlook Handbook on top executives which states, "[t]op executives typically need a bachelor's or master's degree in an area related to their field of work." The Director concluded that the Petitioner's intended CEO position does not require an advanced degree.

On appeal, the Petitioner claims she is eligible for classification as an advanced degree professional because she has a master's degree in law and her proposed endeavor is related to environmental services and ensuring compliance with local and federal regulations, in which she is highly experienced.

De novo review shows the Director erroneously concluded the Petitioner is not an advanced degree professional for three reasons. First, the Petitioner is a lawyer and therefore a member of the professions as the term profession is defined at section 101(a)(32) of the Act and the EB-2 regulations at 8 C.F.R. § 204.5(k)(2). Second, she holds the equivalent of a United States master's degree in law which qualifies as an advanced degree pursuant to the definition of advanced degree in the EB-2 regulation at 8 C.F.R. § 204.5(k)(2).

Third, she proposes to be the CEO of a company providing services in environmental law and comprehensive legal advice on environmental issues. As the Petitioner's business plan indicates, a substantial part of her work and responsibilities involve environmental law. The portion of the OOH the Director cited states that top executives typically require a bachelor's or master's degree "in an area related to their field of work." The Petitioner's field of work as the CEO of an environmental consulting company involves environmental law. We take administrative notice that in the United States the occupation of a lawyer requires an advanced degree, the juris doctor or master of laws. Consequently, the Petitioner's proposed occupation requires an advanced degree in law, and she is eligible for EB-2 classification as an advanced degree professional.

The Director's contrary determination is withdrawn. As the Director did not assess the Petitioner's eligibility for a national interest waiver, we will remand this matter to the Director to determine

whether she meets the three prongs of the analytical framework in *Matter of Dhanasar* to establish eligibility for, and merits a favorable exercise of discretion to grant, a national interest waiver.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.