U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34811759

Date: DEC. 06, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist / 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner was an advanced degree professional. 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. If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 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,[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.

II. ANALYSIS

With the Form I-140, Immigrant Petition for Alien Workers, the Petitioner claimed that he is a dentist and entrepreneur. In support of his claim that he is a member of the professions holding an advanced degree, he submitted documentation regarding his university degree as a surgeon dentist or *Título de Cirurgião Dentista* (Title of Dental Surgeon) in his native Brazil, including a diploma, a certificate, and a transcript. He also submitted an evaluation of his academic credentials from Morningside Evaluations and letters describing his work experience. One of his academic certificates stated that he had completed an undergraduate dentistry program with the major of surgeon dentist in 2010. The academic evaluation stated that the Petitioner had completed post-secondary university-level coursework in the field of surgeon dentist, along with an additional diploma related to dental radiology and imaging. The evaluation further contended that the Petitioner "has attained the equivalent of a Doctor of Dental Surgery degree" from an accredited institution of higher education in the United States. In response to a request for additional evidence (RFE) from the Director regarding the advanced degree professional requirement, the Petitioner additionally submitted letters from employers and an expert opinion letter from [redacted] a professor in the [redacted], which asserted support for the instant petition and the Petitioner's proposed endeavor.

In denying the petition, the Director concluded that the Petitioner did not qualify as a member of the professions holding an advanced degree. The Director determined that the Petitioner's degree in dentistry was not consistent with his proposed occupation in the United States as a chief executive and entrepreneur; and therefore the evidence submitted by the Petitioner did not satisfy requirements for

[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.

[2] *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).

advanced degree professionals. The Director also found that the Petitioner's Brazilian degree in dentistry did not constitute a doctoral degree, as he claimed. Although the Director did not fully analyze the Petitioner's eligibility for the national interest waiver under the three-prong *Dhanasar* framework, the Director observed that the record did not establish that the Petitioner met those requirements.

On appeal, the Petitioner argues that his degree is equivalent to a doctor of dental surgery and thus he is eligible for the requested classification as an advanced degree professional. He contends that the Director did not consider his resume, diplomas, transcripts, academic evaluation, expert opinion letter, and letters from employers verifying the Petitioner's claimed progressive post-baccalaureate experience. The Petitioner further asserts that the Director erroneously required a degree related to the Petitioner's endeavor as an entrepreneur and additionally that the Director improperly imposed a stricter standard of proof than is required. Finally, the Petitioner argues that he merits the national interest waiver as a matter of discretion under the *Dhanasar* principles because his "entrepreneurial endeavors not only meet but exceed the requirements for national interest by contributing significantly to the U.S. healthcare system and economy".

As stated above, the definition at 8 C.F.R. § 204.5(k)(2) states, in pertinent part, that "[i]f a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." In other words, the regulation does not allow for a combination of education and experience if "a doctoral degree is customarily required by the specialty."

Per to the "How to Become a Dentist" section of the *Occupational Outlook Handbook* (*OOH*) entry for Dentists (SOC code 29-1020)[3]:

> Dentists must be licensed in the state in which they work. Licensure requirements vary by state, although candidates usually must have a Doctor of Dental Surgery (DDS) or Doctor of Medicine in Dentistry/Doctor of Dental Medicine (DMD) degree from an accredited dental program and pass written and clinical exams.
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> Dentists typically need a DDS or DMD degree from a dental program that has been accredited by the Commission on Dental Accreditation (CODA). Most programs require that applicants have at least a bachelor's degree and have completed certain science courses, such as biology or chemistry.

As the field of dentistry customarily requires a doctoral degree which cannot be met with a combination of education and experience, the Petitioner's dentistry degree does not satisfy the requirement for advanced degree professionals with five years of progressive experience following his bachelor's degree according to at 8 C.F.R. § 204.5(k)(2). Despite the Petitioner's claims, we find the evidence in the record indicates that his dental degree is not a doctoral degree and is instead a bachelor's or undergraduate degree. His academic certificates clearly state that the degree he earned is an undergraduate degree. The Occupational Outlook Handbook notes that doctoral programs

[3] *See* Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Dentists, at https://www.bls.gov/ooh/healthcare/dentists.htm (October 04, 2024).

typically require their applicants to have *already completed* a bachelor's degree. The secondary evidence in the record, such as the support letter and evaluation, do not claim that the Petitioner holds the foreign equivalent of a DDS or DMD, nor do they address this as a typical requirement for his field.

For all of these reasons, the Petitioner has not demonstrated that he holds the foreign equivalent degree of a doctorate in his field, and therefore, has not established that he is a member of the professions holding an advanced degree consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2). As the Petitioner does not otherwise argue that he is otherwise eligible for EB-2 classification, a threshold consideration for the requested petition, we conclude that he is ineligible for the national interest waiver.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby the reserve remaining arguments concerning eligibility for a national interest waiver under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). The petition will remain denied.

ORDER: The appeal is dismissed.