U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29278039

Date: JAN. 09, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a legal services provider, 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 record did not establish the Petitioner's eligibility for the underlying EB-2 classification or her eligibility under any of the three prongs in the analytical framework set forth in the Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016) precedent decision. 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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.

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 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," Dhanasar,

provides the framework for adjudicating national interest waiver petitions. Dhanasar, 26 I&N Dec. 884. 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.

II. ANALYSIS

A. Advanced Degree

In our de novo review of the Petitioner's eligibility for the underlying classification, we agree with the Director that the Petitioner has not established eligibility as a member of the professions holding an advanced degree.[2] Although, the Director determined the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in law, the Director found the evidence did not establish that she possessed at least five years of progressive post-baccalaureate experience in the specialty.

To show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

We acknowledge documents referencing the Petitioner's diploma in architecture and urban planning as well as her completion of a program in environmental management. The Petitioner did not submit academic equivalency evaluations for either of these foreign academic programs and therefore we cannot determine the U.S. equivalency of them. Further, the record does not appear to contain a diploma for the architecture and urban planning program, but simply a transcript and documents that reference a diploma. Similarly, the Petitioner refers to the environmental management course as a "post-undergraduate" and "post-graduate" program but does not explain the use of these terms in the context of U.S. equivalency, nor does she offer evidence that completing this program resulted in a degree. Because we cannot determine whether these academic programs are the foreign equivalents of U.S. baccalaureate degrees, even if the Petitioner established that she has at least five years of progressive experience in either area, we could not consider her experience to be post-baccalaureate in nature.

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[1] See also Poursina v. USCIS, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[2] The Petitioner has not asserted that she qualifies as an individual of exceptional ability. Therefore, we will not discuss whether the evidence establishes her eligibility under any of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

Based on the information contained in the record, the Petitioner has not met her burden to establish the U.S. equivalency of her foreign education in law in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Director issued a request for evidence (RFE) for an academic equivalency evaluation of this academic program, but the Petitioner has not provided such documentation. The Director nevertheless reviewed the AACRAO EDGE database and determined the Petitioner's foreign education is comparable to a U.S. bachelor's degree in law. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit https://www.aacrao.org/edge.

Nevertheless, the Director concluded the evidence did not establish the Petitioner had at least five years of progressive post-baccalaureate experience in law at the time the Petitioner filed her petition. We agree. The evidence provided does not fully comport with the regulation at 8 C.F.R. § 204.5(g)(1), which provides in pertinent part, that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the [individual] or of the training received." The Director specifically requested letters containing such information and provided the Petitioner an opportunity to submit additional evidence to overcome the shortcomings in the initial employment evidence.

The Petitioner provides the same letters for our review on appeal. These letters do not satisfy the Petitioner's burden because they do not describe the Petitioner's duties or show how the work she performed was progressive and they do not provide clear start and end dates with a month, day, and year. Additionally, several letters are not on letterhead and do not otherwise indicate that they are official correspondence. The printout from the Office of the Court Administrator provides case status updates for four cases upon which the Petitioner worked, but this tells us little about when the Petitioner performed work on these cases or what the work involved. Another document indicates the Petitioner served as a juror. Without more context, this appears to be confirmation that the Petitioner performed jury duty. We cannot determine how this document represents any work experience.

On appeal, the Petitioner provides a certificate stating that she served as a conciliator. The document includes various dates but does not explain to what they refer in the context of conciliator work. The Petitioner provides little explanation for what the document represents, but simply labels the document as volunteer work. It is not apparent whether she worked a series of single isolated days or whether her work spanned multiple days on multiple occasions. As such, this document is insufficient to establish a concrete timeframe for her work experience as a conciliator.

We reviewed the Petitioner's résumé and statements about her experience; however, evidence the Petitioner creates for the purpose of establishing eligibility is not as probative as independent and objective evidence from sources such as her employers. Therefore, while we have considered the Petitioner's representations of her own experience, we conclude it is insufficient to establish the Petitioner possesses at least five years of progressive post-baccalaureate experience for the purposes of establishing eligibility as an advanced degree professional.

For the foregoing reasons, the Petitioner has not established she has five years of progressive post-baccalaureate experience in any specialty. Therefore, she has not established she is an advanced

degree professional. Qualifying for the EB-2 classification is a threshold requirement. Accordingly, the Petitioner has not established eligibility for a national interest waiver.

B. Other Deficiencies

Despite the Director's specific request for it, the Petitioner has not provided an ETA Form 9089 or ETA-750 as required. In addition, we reviewed the Petitioner's statements about her proposed endeavor and conclude that they are brief and vague, thereby preventing any meaningful analysis of them. To the extent that we understand the Petitioner's proposed endeavor, we conclude that it does not appear to have national importance. For instance, an endeavor to pursue her own education may bear upon the Petitioner's own personal and professional accomplishments but such activity does not appear to have any broader implications for the nation. The Petitioner should be aware of these shortcomings in any future filings.

III. CONCLUSION

The Petitioner has not demonstrated that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.