U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29229846

Date: JAN. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the marketing field building her own brand, 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 is a member of the professions holding an advanced degree or that she qualifies for a national interest waiver in the exercise of discretion. 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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," *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) provides the framework for adjudicating national interest petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[1] 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.

- 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. Petitioner's Educational Credentials

The first issue on appeal is whether the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional.[2] The term "advanced degree" is defined at 8 C.F.R. § 204.5(k)(2) as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree . . .

The regulations at 8 C.F.R. § 204.5(k)(3)(i)(A)-(B) state that a petition for an advanced degree professional must be accompanied by either an official academic record showing that the noncitizen has a U.S. advanced degree or a foreign equivalent degree, or by an official academic record showing that the noncitizen has a U.S. baccalaureate degree or a foreign equivalent degree, accompanied by employer letters demonstrating the five required years of progressive experience in the specialty. To establish eligibility, the Petitioner provided diplomas, transcripts, and an educational evaluation regarding the following credentials:

- Degree in fashion from [redacted] (2001-2004); and
- Certificate from [redacted] (2006-2007).

The Director concluded that contrary to her claims, the Petitioner did not provide evidence establishing that she received an advanced degree in Brazil or that she has five years of progressive post-baccalaureate work experience in her specialty, and that therefore she is ineligible for the advanced degree professional classification. On appeal, the Petitioner provides a brief stating that the academic evaluation and employment verification letters demonstrate her claimed educational credentials and work experience, and alleges that the Director overlooked, misinterpreted, or did not give "due regard" to the evidence.[3] Upon review of the entire record, we conclude that the Petitioner has not met her burden of proof and provided relevant, probative, and credible evidence establishing her eligibility for

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[2] The Petitioner does not claim, and the record does not indicate, that she qualifies for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

[3] The Petitioner also asserts that the Director violated her due process rights because the present petition was adjudicated by the same officer who denied her prior national interest waiver petition. According to the Petitioner, this created "an inherently (*sic*) bias from the first case into the second review, which [led] to the officer not evaluating the second application with an open mind, negatively impacting the decision." However, beyond generally asserting that the decision did not employ the correct standard of proof, the Petitioner does not establish how having the same officer adjudicate both petitions violated her right to procedural due process. Because the Petitioner provides no further elaboration on or legal support for this claim, we will not address it further. *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).

the advanced degree professional classification. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (explaining the "preponderance of the evidence" standard used in these proceedings).

The expert opinion letter from A-W- states that the Petitioner's educational credentials, in combination with her work experience, are equivalent to a U.S. master's degree in business administration. As a matter of discretion, we may use expert opinion letters submitted by the Petitioner as advisory testimony. However, we are responsible for making the final determination regarding eligibility for the benefit sought. Where an opinion letter is not in accord with other information in the record or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). In this instance, A-W-'s letter is not in accord with the Petitioner's educational records.

According to the Electronic Database for Global Education (EDGE),[4] an online resource regarding foreign educational equivalencies, a Brazilian Título de Bacharel degree is awarded after three to five years of study. While a three-year degree is only equivalent to three years of university study in the United States, a four- or five-year degree represents a level of education comparable to a U.S. baccalaureate.[5] The Petitioner's baccalaureate degree transcript is for a program of study that lasted from 2001 to 2004. However, while not noted by the Director, this transcript also indicates that the Petitioner did not take any courses in the first semester of 2002, and furthermore does not state any grades for the classes taken from 2001 to 2002. While the Petitioner's graded classes from 2003 and 2004 have a status of "APR," or "aprovado," the classes with no grades have a status of "DISP," or dispensado. According to EDGE, in a Brazilian educational document, "aprovado" means "passed," while "dispensado" means "waived, exempt."[6] There is no indication in the transcript or the rest of the petition record as to why the Petitioner was exempt from three semesters of classes or whether her course of study actually lasted four years. The evaluation does not mention this issue, simply stating that the Petitioner completed a four-year course of study that was the equivalent of a U.S. baccalaureate degree.

Furthermore, A-W- states that the Petitioner's teaching course certificate is a Brazilian "Master's Degree in Education." According to EDGE, Brazilian master's-level credentials are titled "Mestrado Profissional," "Título de Mestre," "Grau de Mestre," or "Diploma de Mestrado." There is no indication on the Petitioner's diploma or transcript from Universidade Candido Mendes that she completed a Brazilian master's degree program. For these reasons, A-W-'s evaluation is not in accordance with the evidence of record, and we will not grant it any evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

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[4] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. *See* AACRAO, *Who We Are*, https://www.aacrao.org/who-we-are; *see also Viraj, LLC*, v. *U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

[5] AACRAO, Título de Bacharel/Grau de Bacharel (Title of Bachelor), https://www.aacrao.org/edge/country/credentials/credential/brazil/título-de-bacharel-grau-de-bacharel-(title-of-bachelor) (last visited Dec. 15, 2023, and incorporated into the record).

[6] AACRAO, *Brazil Grading Scales*, https://www.aacrao.org/edge/country/grading/brazil (last visited Dec. 15, 2023, and incorporated into the record).

As explained above, the Petitioner has not submitted an official academic record showing that she has a foreign degree which is equivalent to a U.S. advanced degree. 8 C.F.R. § 204.5(k)(3)(i)(A). Additionally, the Petitioner's baccalaureate degree transcript and supporting materials provide no explanation for why she only received grades for two years of a four-year course of study, which raises doubts as to whether her degree is equivalent to a U.S. baccalaureate. 8 C.F.R. § 204.5(k)(3)(i)(B).

Because the Petitioner did not receive prior notice of the concerns regarding her baccalaureate degree records, we discuss this issue so that the Petitioner can address these concerns in future filings in this matter. However, even if the record showed that the Petitioner has a qualifying baccalaureate degree, the Petitioner did not submit evidence establishing that she has five years of progressive work experience in her specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

B. Petitioner's Work Experience

According to 8 C.F.R. § 204.5(g)(1), evidence regarding qualifying work experience should be in the form of letters from current or former employers which include the name, address, and title of the writer, as well as a specific description of the Petitioner's duties. In U.S. Department of Labor, Form ETA-750, Application for Alien Employment Certification, which she signed under penalty of perjury, the Petitioner stated she had the following full-time post-baccalaureate work experience:[7]

- U.S. Brand Manager, [redacted] (July 2020 to present);
- Consultant, [redacted] (May 2020 to present);
- Marketing and Merchandizing Manager, [redacted] (April 2018 to July 2020);
- Travel Retail Purchasing and Merchandizing Manager, [redacted] (November 2017 to April 2018);
- Travel Retail Purchaser, [redacted] (March 2017 to November 2017);
- Real Estate Associate, [redacted] (June 2016 to June 2017);
- Creative General Manager, [redacted] (January 2009 to August 2016);
- Independent Teacher, [redacted] (July 2006 to August 2010); and
- Independent Corporate Consultant and Coach (February 2006 to December 2010).

The March 2023 letter from [redacted] states that the Petitioner was employed there from July 13, 2020, to January 26, 2022, as their "U.S. Brand Manager," describes her duties, and provides the information required by regulation. *Id.* However, a petitioner must establish eligibility for the benefit sought as of the time of filing. 8 C.F.R. § 103.2(b)(1). The current petition was filed on September 22, 2020. This letter therefore documents only 71 days of qualifying work experience. Similarly, the March 2023 letter from [redacted] confirms employment that began in 2022, well after the petition filing date, and so does not document qualifying work experience.

[7] Form ETA-750 instructs the preparer to state every job they have held in the past three years, as well as "any other jobs related to the occupation for which the alien is seeking certification . . ." *See also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations requiring that form's submission). The Petitioner submitted two Forms ETA-750 in connection with her prior 2018 national interest waiver petition, which also sought a position in business management. These forms only stated the Petitioner's positions at [redacted], and omitted the realty, teaching, and consultancy positions the Petitioner is now relying upon to establish her relevant work experience. Where there are inconsistencies in the record, it is the Petitioner's burden to resolve these inconsistencies using independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not resolved the inconsistencies in the job histories she provided in her various Forms ETA-750. While this was not mentioned by the Director, the Petitioner should be prepared to address this issue in any future filings in this matter.

The letter from F-V-J- of [redacted] is dated January 11, 2018, and indicates that the Petitioner began working there "in the beginning of 2017." This letter provides a detailed account of the Petitioner's duties, as required by regulation, but does not state an exact start date. It also appears to detail only her duties as a purchasing manager, not in her initial position as a purchaser. Given the Petitioner's claim that she began working at [redacted] in March 2017, this letter documents, at most, approximately 10 months of work experience.

The April 2023 letter from J-W- of [redacted] states that the Petitioner "was working for [redacted] from March 21st, 2017 to July 10th, 2020 in the full-time position as Global Marketing and Visual Merchandising Manager." However, this contradicts the Petitioner's own account of her work history in her ETA-750, which states that she was initially hired at [redacted] as a purchaser, was promoted to purchasing manager in November 2017, and was promoted to the marketing and merchandising manager position in April 2018. The Petitioner has not provided evidence to resolve the contradictions between this [redacted] letter and her ETA-750. *Matter of Ho*, 19 I&N Dec. at 591-92. The letter relates to three years and three and a half months of the Petitioner's work experience.

The record contains a letter with [redacted] letterhead in which the Petitioner describes her own work experience at that organization. However, this letter is dated April 2023, and by its own account, the Petitioner stopped working at [redacted] in 2017.[8] It is not apparent how the Petitioner had the authority to write a reference letter on [redacted] behalf six years after she stopped working there. Because the Petitioner has not resolved this discrepancy, we do not consider this letter to be from the Petitioner's former employer, as required by regulation. *Id.*

We further note that the accountant letter which states the Petitioner worked at [redacted] from 2009 to 2017 also states that "[redacted] [is the] commercial name of the engineering and construction company [redacted]"[9] The Petitioner, however, describes the company as providing "consultancy in design, event planning, branding, marketing, store design, and advertising." There is no independent, reliable evidence in the record establishing the nature of [redacted] business or the Petitioner's duties there, and so we will not accept this letter as evidence of qualifying work experience. *Matter of Ho,* 19 I&N Dec. at 591-92. ("Attempts to explain or reconcile conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."). While this issue was not mentioned by the Director, the Petitioner should be prepared to address it in any future filings in this matter.

The letters from C-F-, of the [redacted],[10] state that the Petitioner "provided teaching services" to [redacted] from 2006 to 2010. As noted by the Director, the Petitioner's field is business management, not teaching, and so this experience is not in her specialty.

The letters from A-L- state that the Petitioner worked as a "freelance service provider" at [redacted] in Brazil for an average of 30 hours a week from 2005 to 2009. First, while A-L- states that she

[8] It is noted that the Petitioner's ETA-750 states that she stopped working at [redacted] in 2016, not 2017, as she states in her experience letter. She has not resolved this inconsistency. *Id.*

[9] As this letter is not from [redacted] and does not detail the Petitioner's duties, we will not accept it as evidence of her work experience.

[10] The record indicates that this institute administrates the fashion department at the [redacted]

supervised the Petitioner at [redacted] the letters are written on her personal letterhead and describe her as an "independent consultant." These letters are therefore not from the Petitioner's former employer. Second, the letters indicate that the Petitioner was employed by [redacted] as a fashion instructor, which is not work experience in her field of business administration. While A-L- states that the Petitioner eventually "became a member of our corporate consulting team," the letter does not say when this occurred, it is not apparent how the Petitioner's time was divided between qualifying business administration duties and non-qualifying duties as a classroom teacher. We therefore cannot conclude that this letter documents the Petitioner's work experience in her specialty of business administration.

Finally, the letter from [redacted] states that the Petitioner began working there in 2016, but does not state a specific start or end date, give a detailed list of duties, state that the Petitioner worked there full-time, or state the address of the writer. It is also not apparent whether the position of real estate associate is one that is in the Petitioner's field.

The only experience letters in the record which come from the Petitioner's employers and relate to qualifying work history are those from [redacted]. If we were to accept the [redacted] letters despite their contradictions with the ETA-750, the work experience documented by these two employers adds up just under three years and five months. This is well below the requirement of five years of relevant post-baccalaureate experience in the specialty which is required to establish eligibility as an advanced degree professional in combination with a baccalaureate degree. 8 C.F.R. § 204.5(k)(2)

The Petitioner has not met the evidentiary requirements of 8 C.F.R. § 204.5(k)(3)(i)(A)-(B) by providing either an official academic record showing that she has a qualifying advanced degree, or an official academic record showing that she has a qualifying baccalaureate degree in combination with experience letters showing five years of post-baccalaureate work experience in her specialty. As such, she does not qualify for the EB-2 classification as an advanced degree professional.

III. CONCLUSION

Because the Petitioner's ineligibility for the EB-2 classification is dispositive of the case, we need not reach the issue of whether she qualifies for a waiver of the job offer requirement in the exercise of discretion and hereby reserve it. *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). The petition will remain denied.

ORDER: The appeal is dismissed.