U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34885605

Date: JAN. 21, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a communications specialist and an entrepreneur in the marketing industry, 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 qualifies for EB-2 classification as an advanced degree professional or that she is eligible for the requested national interest waiver. 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 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).

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, 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,[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.

Id.

II. ANALYSIS

A. EB-2 Visa Classification

As indicated above, the Petitioner must first demonstrate qualification for the underlying EB-2 visa classification. Section 203(b)(2)(B)(i) of the Act. The Director determined the Petitioner is not an advanced degree professional and we agree.[2]

The Petitioner provided various documents, including a copy of her foreign degree (*Titulo de Bacharel em Comunicacaçã Social*) and transcripts, along with certified translations, from the [redacted] in Brazil. As explained by the Director, documentation in the record indicates that the program length was three years. According to the school transcript, she was admitted in July 1993 and her "Date of the Graduation" was August 5, 1996 which is confirmed by the "Certificate" which states that the Petitioner was granted the degree "in the first semester 1997, and graduated on August 5, 1996." The American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE)[3] states that:

> 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.

While we acknowledge the Petitioner's contention on appeal that the Director "erred in considering August 1996 as the date of completion" because the transcripts "clearly indicate [the Petitioner] completed a total of nine (9) semesters or four (4) years of study, commencing in July 1993 and concluding in June 1997," she does not offer any explanation for the August 1996 graduation date provided by the school in two separate documents. And although the Petitioner also submits a

[1] *See also 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 to be discretionary in nature).

[2] As the Petitioner has not claimed to qualify as an individual of exceptional ability, we need not address the separate requirements for that classification.

[3] 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). For more information, visit https://www.aacrao.org/edge.

credential evaluation from Morningside Evaluations, it states the Petitioner completed four years of academic coursework and qualified for the *Titulo de Bacharel* in 1997 but does not address or explain the discrepancy with the dates. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 T&N Dec. 582, 591-92 (BIA 1988). Thus, the Petitioner has not sufficiently established that she holds the foreign equivalent of a U.S. bachelor's degree as required by 8 C.F.R. § 204.5(k)(2).

Moreover, the record also does not show she has at least five years of progressive experience in the specialty. A petitioner must provide "evidence in the form of letters from *current or former employer(s)* showing that [the petitioner] has at least five years of progressive post-baccalaureate experience *in the specialty*." 8 C.F.R. § 204.5(k)(3)(i)(B) (emphasis added). On appeal, the Petitioner provides four employment letters that were previously submitted in response to the Director's request for evidence (RFE).[4] However, the employment letters are insufficient to establish that the Petitioner possesses at least five years of progressive post-baccalaureate experience in the specialty. First, the letter from [redacted] is for the Petitioner's January 2023 employment, which is after the petition's filing. The Petitioner must establish eligibility at the time of filing and, therefore, we will not consider the [redacted] letter here.[5] 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the letter from [redacted] states that the Petitioner "worked in a full-time position from 10/15/1995 to 02/01/2001 as a Store Operations Coordinator," a position unrelated to the specialty, communications specialist. Moreover, the letter from [redacted] was prepared by the [redacted] who is not the Petitioner's employer. While the Petitioner provides a letter from her previous employer, [redacted], it shows only four years and seven months of experience in the specialty. Therefore, the record does not establish that the Petitioner possessed at least five years of progressive post-baccalaureate experience in the specialty.

Because the Petitioner has not established that her degree is the foreign equivalent of a U.S. bachelor's degree or that she has five years of progressive experience in the specialty, we cannot conclude that the Petitioner has established eligibility as an advanced degree professional. For this reason alone, the petition is not approvable.

B. National Interest Waiver

The Petitioner proposes to work in the United States as a marketing and communications specialist through her own company, of which she owns 10%, and her current position as head of marketing for a food and beverage company. The Petitioner contends she is able "to provide high-quality services that will indirectly generate jobs for the U.S. citizens" and that her endeavor "will also contribute to the overall revenue growth of the marketing consultants industry."

Turning to the first *Dhanasar* prong, the Director determined that, although the Petitioner's proposed endeavor has substantial merit, she did not establish her endeavor is of national importance.

[4] The above-mentioned employment history is not listed on the Form 9089, Application for Permanent Employment Certification, Appendix A. The Form 9089 instructions direct filers to identify "any relevant employment," but the Petitioner only listed her employment with [redacted] The Petitioner does not provide an explanation as to why she did not list her employment with [redacted] on the Form 9089 but provides letters from these companies in response to the RFE and on appeal in support of her five years of experience in the specialty.

[5] The Petitioner filed the petition on July 1, 2021.

Specifically, the Director concluded that the proposed endeavor would not have broader implications in her field rising to the level of national importance. The Director further noted that the evidence did not support her proposed endeavor having potential prospective impact, such as significant potential to employ U.S. workers; substantial positive economic effects; or broad impact to enhance societal welfare or cultural or artistic enrichment.

On appeal, the Petitioner stresses her professional knowledge and experience in her field to show her contributions to and influence on the marketing industry. However, the Petitioner's knowledge, skills and experience are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar,* 26 I&N Dec. at 889. The issue here is whether the Petitioner has demonstrated, by a preponderance of the evidence, the national importance of her proposed endeavor.

The Petitioner asserts her work as a marketing and communication specialist "holds substantial national importance due to its broad economic, social, and cultural contributions" and "[h]er contribution extends far beyond her company or employer, playing a pivotal role in industry growth, community welfare, and national economic development." The Petitioner, however, has not provided evidence demonstrating that her proposed endeavor would operate on such a scale as to rise to a level of national importance. It is insufficient to claim an endeavor has national importance or would create a broad impact without providing evidence to substantiate such claims. Furthermore, while any basic economic activity has the potential to positively affect the economy to some degree, the Petitioner has not demonstrated how the asserted potential prospective impact of her proposed endeavor stands to offer broader implications in her industry or to generate substantial positive economic effects. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the Petitioner has not shown that her proposed endeavor stands to sufficiently extend beyond her future clients and employer(s) to impact her field of marketing, the economy, or U.S. societal welfare more broadly at a level commensurate with national importance.

Specifically, we reviewed the Petitioner's business plan, which shows that the company will employ six full-time employees, pay over $300,000 in payroll expenses, and generate a net worth of over $400,000 by its fifth year. Importantly however, these employment and revenue projections are not supported by details showing their basis, nor do they demonstrate a significant potential to either employ U.S. workers or to substantially impact the regional or national economy. Here, the record does not support that the creation of six additional jobs in this sector or the expected revenue generated by the company will have a substantial economic benefit commensurate with the national importance element of the first prong of the *Dhanasar* framework.

In addition, we reviewed the opinion letter from a professor at [redacted] In the national importance section of the letter, the author provides data and statistical references for the marketing and communications industry, and the food and beverage industry, as well as the laws and regulations that govern the marketing industry. The author, however, does not address the Petitioner's business plan, the specific proposed endeavor described therein, its prospective substantial economic impact, or any broader implications of the Petitioner's intended marketing and communications specialist services. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work;

instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar,* 26 I&N Dec. at 889. Similarly, the articles and reports regarding the marketing industry do not address the specific proposed endeavor or how it would have broad implications in the field in a way that demonstrates national importance.

Because the Petitioner has not established eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the remaining prongs, and we hereby reserve them. *See INS v. Bagamasbad,* 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. The burden of proof is on the Petitioner to establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here and, therefore, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.