U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31656184

Date: JUL. 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a real estate 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 Petitioner did not establish that he qualifies for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. 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,[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

According to the Petitioner, he meets the eligibility requirements for EB-2 visa classification as a member of a profession with an advanced degree.[2] He asserted he has a foreign degree equivalent to a U.S. bachelor's degree of law and 11 years of significant post-baccalaureate experience working in business administration and related areas. The Director determined that though the Petitioner established he had the equivalent of a U.S. baccalaureate degree, he did not submit sufficient evidence to demonstrate he had at least five years of progressive post-baccalaureate experience in the specialty as required by 8 C.F.R. § 204.5(k)(2). Therefore, the Petitioner did not show he is an advanced degree professional.

The Director issued a request for evidence (RFE) notifying the Petitioner, in part, that the record did not establish he obtained at least five years of progressive post-baccalaureate experience. The Director noted the submitted expert credential evaluation claimed the Petitioner "completed approximately [11] years of professional training and work experience in Business Administration" and "he served in positions of increasingly professional responsibility and sophistication" that was "under the supervision of managers at a level of employment commensurate with Master's-level training." The Director requested additional documentation, such as letters from current or former employers describing the Petitioner's job duties in detail. The RFE response contained multiple employment verification letters written by the Petitioner. The Director determined that the letters did not remedy the deficiencies noted in the RFE because they did not detail progressive experience, any changes in duties over time, or whether the positions were full-time or part-time. Further, the Director noted that evidence of qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the Petitioner's experience. The regulation at 8 C.F.R. § 204.5(g)(1), 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 alien or of the training received."

On appeal, the Petitioner argues that the Director erred by imposing a stricter standard of proof than preponderance of evidence. He further asserts that the submitted evidence shows he has established eligibility for EB-2 visa classification as a member of a profession with an advanced degree and a waiver of the required job offer would be in the national interest. The Petitioner refers to the

[1] *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).

[2] The Petitioner did not claim that he qualifies for EB-2 classification as an individual of exceptional ability.

employment verification letters provided with the RFE response and claims that the letters detail his "progressive post-baccalaureate experience over the years."

With respect to the standard of proof in this matter, a petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director thoroughly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether he had demonstrated, by a preponderance of the evidence, that he established eligibility for EB-2 visa classification.

Upon review, we agree with the Director's determination that the Petitioner did not establish eligibility for EB-2 visa classification as a member of a profession with an advanced degree. The Petitioner did not provide additional evidence or explanations with supporting documentation on appeal to remedy the deficiencies noted by the Director. As explained in detail in the denial, the employment verification letters were not provided by current or former employers and the letters did not provide details showing progressive experience.

Because the petition cannot be approved without an underlying determination that the Petitioner qualifies for EB-2 classification, we will reserve discussion of the Petitioner's national interest waiver claim under the *Dhanasar* framework.[3]

**ORDER:** The appeal is dismissed.

[3] *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 alternate issues on appeal where an applicant is otherwise ineligible).