U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31282475

Date: JUL. 09, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, under Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this employment based second preference (EB-2) classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *See id., 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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner had five years of progressive post-baccalaureate experience. Further, the Director determined the Petitioner did not demonstrate that her proposed endeavor was of national importance, that she was well positioned to advance the endeavor, or that it would be beneficial for the United States to waive the requirements of a job offer and a labor certification. 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.

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. 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. 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 United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(3).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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 USCIS may, as a matter of discretion, 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.

The Petitioner proposes to work as a financial management consultant and intends to establish her own business in [redacted] Texas. She indicates the goal of the business is to offer "consultancy and advisory services in finance with planning and analysis of the financial resources of companies to guarantee profitability in accounts and investments, analyzing expenses and available resources".

The Director determined that the Petitioner did not establish that she is eligible for the underlying EB-2 classification as an advanced degree professional, concluding that although the record shows that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in administration, graduating from [redacted] in April 2016, the record does not show that she has five years of progressive post-baccalaureate experience in the specialty. The Petitioner asserts that she has been employed as a billing analyst for 5 years and therefore qualifies for the EB-2 classification.

In evaluating the Petitioner's work experience, we agree with the Director's determination that there is not adequate documentation to establish the Petitioner has accumulated at least five years of progressive post-baccalaureate work experience. Regarding employment experience, the Petitioner submitted an affidavit from [redacted] with the initial filing and indicated in her curriculum vitae and business plan that she gained the progressive

[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.

experience in her employment with [redacted] The Petitioner explains that she was a billing assistant from June 2012 to March 2015 and then became a billing analyst until October 2020. The affidavit from [redacted] details the Petitioner's responsibilities from June 2012 to October 2020 as follows:

- Performance of billing;
- Assessment of purchase orders;
- Cash flow control;
- Provide support in audit;
- Preparation of annual budget;
- Technical analysis of balance sheet;
- Accounting closings;
- Participation in monthly meetings with the management team to monitor revenue cost, among others.

However, this affidavit does not explain the Petitioner's progression in the field of financial management. There is no indication of growth in responsibilities after receiving her degree in administration in April 2016 or after her duties changed from billing assistant to analyst. The Petitioner's own statement does not contain sufficient details regarding the specific duties that she performed in this company or how her responsibilities progressed over time. Further, because the Petitioner graduated in April 2016, the experience gained prior to 2016 does not qualify as post-baccalaureate experience. Therefore, the Petitioner only has four years and six months of experience with [redacted], not the five years of progressive experience necessary to be eligible for the EB-2 classification.

In response to a request for additional evidence (RFE) regarding her work experience, the Petitioner submitted evidence of a second employer, [redacted] for the first time. Similar to the letter from [redacted] this employment verification letter does not provide sufficient detail to assess the progressive nature of her experience. The employer's description of the duties indicates the Petitioner, "conducted market feasibility studies for a new financial structure, with fundraising for financial stabilization in order to value the company for a new presentation in the market with improvements and commercial highlight." She also engaged in "Planning and payment of expenses and purchases, alignment and negotiation of debts with amounts payable and receivable, investment and financial planning." However, there is no indication of the Petitioner's advancement in financial management, knowledge, or responsibilities. Without additional relevant, probative, and credible evidence, the Petitioner has not met her burden of proof to demonstrate her qualifying progressive experience in the specialty. *See Matter of Chawathe*, 25 I&N Dec. at 376.

We also note that in the initial filing, the Petitioner only indicated she was employed with [redacted] The ETA 750 Application for Alien Employment Certification (Form ETA 750), business plan and the Petitioner's own curriculum vitae do not include information about any other employment, although the Form ETA 750 directs applicants to list any other jobs related to the occupation for which

the foreign national is seeking certification.[2] The RFE response includes an employment verification letter from [redacted] showing employment from October 2020 until April 2021 as a billing analyst as well as an updated [redacted] employment letter. As discussed previously it is the Petitioner's burden to demonstrate her qualifying progressive experience. *Id*. at 376. Neither the RFE nor appeal contain an explanation as to why employment with [redacted] was not disclosed prior to the RFE. This inconsistency in the Petitioner's employment history is relevant to her assertion that she has the required five years of progressive post-baccalaureate experience in financial management. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Because the Petitioner has not demonstrated that she possesses at least five years of post-baccalaureate progressive experience in the specialty, the Petitioner does not qualify as an advanced degree professional. Having determined that the Petitioner does not qualify as an advanced degree professional, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that she meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether she is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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 Petitioner has not established that she qualifies for a second-preference employment visa as a member of the professions holding an advanced degree. Therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

[2] Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) ("Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions. . . . The form's instructions are hereby incorporated into the regulations requiring its submission.").