U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31285172

Date: JULY 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, 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 Petitioner did not qualify for EB-2 classification as a member of the professions holding an advanced degree, and did not establish 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. 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 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. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is considered the equivalent of a master's degree. *Id.* To establish this equivalent, a petitioner must submit letters from current or former employer(s) showing the petitioner has at least five years of progressive post-baccalaureate experience in the specialty. *Id.* at § 204.5(k)(3)(i)(B). Evidence of qualifying experience must be in the form of letters from current or former employers or trainers including the name, address, and title of the writer, and a specific description of the duties performed by the alien. *Id.* at § 204.5(g)(1). If such evidence is unavailable, other documentation relating to the individual's experience will be considered. *Id.*

In addition, mere possession of an advanced degree or its equivalent is not sufficient for establishing a beneficiary's eligibility for this classification. *See* 6 *USCIS Policy Manual* F.5(A)(3), https://www.uscis.gov/policy-manual (providing guidance that a petitioner must demonstrate that the position, and the industry as a whole, normally requires that the position be filled by a person holding an advanced degree).

II. ANALYSIS

The Petitioner is a managing partner of an oral health company who proposes to serve as the chief executive officer of a dental services company operating clinics in the United States. The Petitioner claims to be an advanced degree professional based on his bachelor's degree and over five subsequent years of progressive experience in his specialty. The Petitioner submitted copies of his bachelor's degree in law from [redacted] in Brazil and his academic transcript showing eight semesters of study. The Petitioner also submitted a credential evaluation report from GEO Credential Services concluding the Petitioner holds the equivalent to a U.S. Bachelor of Science degree in legal studies. The Director determined the Petitioner holds the equivalent of a U.S. baccalaureate degree. We agree. The Director concluded, however, that the Petitioner did not demonstrate that he had five years of progressive experience in his specialty because he did not submit letters from his current or previous employers.

On appeal, the Petitioner states he has been self-employed as the Chief Executive Officer (CEO) and Managing Partner of [redacted] since 2016 and consequently cannot provide an employer letter regarding his current position. The record contains varying descriptions of the Petitioner's position and his company. In his business plan, the Petitioner states he is a managing partner at [redacted] On the Form ETA 750, the Petitioner identified his job as owner and manager of a dental services business. Letters from individuals familiar with the Petitioner's work describe [redacted] as a franchise company. For example, O-G-[1] describes [redacted] as "Brazil's [redacted] J-D-F-, who owns an [redacted] franchise, states the company "has more than 1100 franchises across the country" in Brazil. Other letters state the Petitioner owns franchises of [redacted] but do not identify him as a CEO or managing partner. The Petitioner did not submit evidence from [redacted] regarding his position with the company. The Petitioner also did not submit evidence that the position, and the odontology franchising industry as a whole, normally requires that the position be filled by a person holding an advanced degree or its equivalent. Without such evidence of the Petitioner's specific professional position, we are unable to assess whether his work with [redacted] demonstrates progressive experience in his specialty.

The Petitioner claims he has over five years of progressive experience based on his increasing responsibilities from when he was a manager at [redacted] restaurant from 2010 to 2011 to when he became Executive Administrator at the [redacted] Church from 2011 to 2016, and culminating in his current position with [redacted] The Petitioner claims the evidence he submitted with his petition demonstrates his years of progressive experience.

[1] We use initials to protect the privacy of individuals referenced in this decision.

The Petitioner initially submitted letters from J-D-F-, O-G-, E-A-A-, E-P-S-, J-F-S-, and R-O-. These individuals praise the Petitioner's successful work with [redacted] and his contributions to the oral health of the communities he serves. For example, O-G- states the Petitioner opened two successful franchises of [redacted] and in 2021 received 100 percent approval in client satisfaction research. E-P-S- credits the success of the Petitioner's franchise in [redacted] with exponential growth in the area's economy and increased access to dental care for the community. Mr. J-F-S- praises the Petitioner's receipt in 2019 and 2020 of awards in recognition of his entrepreneurship in [redacted] E-P-S-, J-F-S, and O-G- do not, however, discuss any of the Petitioner's prior professional experience or otherwise indicate how his work with [redacted] constitutes progression in his specialty.

J-D-F- lists some of the Petitioner's responsibilities at [redacted] restaurant and credits the Petitioner with evolving the establishment from "a home-style restaurant to one of the largest restaurants in [redacted] J-D-F- identifies himself as an entrepreneur and does not indicate that he ever employed the Petitioner at [redacted] The Petitioner did not submit a letter from his employer at the restaurant.

Similarly, R-O- praises the Petitioner for his past work with the [redacted] in Mato Grosso but does not indicate that she ever employed him at the church as she is a Congresswoman from the State of Mato Grosso. E-A-A-, pastor of the [redacted] in Mato Grosso, states the Petitioner played a critical role in organizing and preparing large events and in the organization of the administrative department of one of the church's branches. E-A-A- states he "decided to hire him to administer and assist in the management at the to [*sic*] young adults alternately." E-A-A-'s letter appears to be missing text regarding the Petitioner's duties and position. In addition, E-A-A- states he decided to hire the Petitioner in 2011 but does not state when the Petitioner's employment with his church concluded.

In response to the Director's request for evidence (RFE), the Petitioner submitted additional letters from E-S-G- and K-N-M-, both of whom state the main reason they purchased franchises of [redacted] was the Petitioner's success with other clinics he managed. While they praise the Petitioner's "unique qualities as CEO," they do not discuss his responsibilities in detail or otherwise indicate that his current position represents progressive experience in his specialty.

In sum, the relevant evidence shows the Petitioner successfully operates franchises of [redacted] but does not sufficiently document his position. The Petitioner also did not submit a letter from his employer at [redacted] restaurant and E-A-A- does not specify the dates, duties, and position of the Petitioner's employment at the [redacted] Consequently, the Petitioner has not established that he has at least five years of progressive post-baccalaureate experience in his specialty. The Petitioner has not demonstrated that he is a member of the professions holding an advanced degree and he does not claim to be an individual of exceptional ability. Accordingly, the Petitioner has not established that he qualifies for EB-2 classification.

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility for a waiver of the job offer requirement in the national interest. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

ORDER: The appeal is dismissed.