U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31492629

Date: JUL. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a special education teacher, 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 a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director specified the record did not establish that the Petitioner's proposed endeavor has national importance, the Petitioner is well-positioned to advance the endeavor, or it would be beneficial to the United States to waive the job offer and labor certification requirements. 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).

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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,[3] 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. ADVANCED DEGREE

The Director found the Petitioner established she qualifies as a member of the professions holding an advanced degree as required for EB-2 classification. The Director determined the record contains a U.S. baccalaureate degree or a foreign equivalent degree for the Petitioner and the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty.

The Petitioner's academic background includes a 2005 licentiate degree in special higher education teaching from [redacted] The Petitioner submitted an evaluation claiming her licentiate degree coupled with 15 years of work experience equates to a master's degree of science in education. However, the evaluation acknowledges the Petitioner enrolled in a two-year academic program to receive her licentiate degree. The Electronic Database for Global Education (EDGE), an online resource that U.S. courts have found to be a reliable source of foreign education equivalencies, indicates only the four-year título de licenciado (licenciatura) is a level of education comparable to a bachelor's degree in the United States. Accordingly, the Petitioner has not demonstrated her 2005 licentiate degree is equivalent to a bachelor's degree. The evaluation further claims that in accordance with a "3-for-1 Rule," which states "three years of relevant work experience is equal to one year of education," the Petitioner has sufficient years of training and work experience

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] 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.

[3] *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).

to equate to a master's degree. However, the evaluation does not reference a statute, regulation, or other source for the "3-for-1 Rule" and the regulations at 8 C.F.R. § 204.5(k) do not include such a rule. Rather, the regulations require submission of a bachelor's degree or foreign equivalent degree to qualify as an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2). As the Petitioner has not met this requirement, she has also not met her burden of demonstrating she qualifies as a member of the professions holding an advanced degree.[4] As such, the Director's finding on the Petitioner's eligibility for the underlying EB-2 visa classification as an advanced degree professional is withdrawn.

The Petitioner previously asserted before the Director that she qualifies for the underlying immigrant classification as an individual of exceptional ability in the sciences, arts, or business. The Petitioner does not make this assertion on appeal. As the Petitioner has not demonstrated the national importance of the proposed endeavor, as outlined below, we reserve the Petitioner's arguments regarding whether she qualifies for EB-2 visa classification as an individual of exceptional ability.[5]

III. NATIONAL INTEREST WAIVER

The Petitioner proposes to work as an inclusive special education teacher in the public school system at the elementary education level. The Petitioner believes her academic background and progressive teaching experience, including children with physical and intellectual handicaps, equip her for this endeavor. The Petitioner seeks to provided special education services in the classroom, as well as assist educators in implementing effective classroom learning methods and strategies.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. *Id.* In determining whether the proposed endeavor has national importance, we consider its potential prospective. *Id.* The Petitioner's proposed endeavor falls within one of these areas and she has established substantial merit.

However, the Petitioner has not met her burden of demonstrating the proposed endeavor is of national importance. The Director determined the Petitioner did not demonstrate her proposed endeavor will sufficiently extend beyond the organization, her students, and her school district, to impact the industry or field more broadly.

On appeal, the Petitioner asserts her proposed endeavor, providing services as a special education teacher with experience, would extend beyond her students alone. The Petitioner contends that by

[4] It is noted the Petitioner also completed lato sensu courses in the areas of specialization in school management, specialization in art of education, and specialization in higher education teaching. The evaluation does not assert that these courses should be considered in determining whether the Petitioner qualifies as a member of the professions holding an advanced degree. And EDGE indicates that lato sensus are "[p]rofessional development and specialization programs" that "lead toward professional certificates, not graduate degrees."

[5] *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 an applicant is otherwise ineligible).

providing resources for children with disabilities at the elementary education level and preparing them to thrive, she will be promoting social mobility and improving society in a myriad of ways. The Petitioner asserts she also has the capacity to work as a bilingual elementary teacher who could teach English as a Second Language. In claiming her endeavor is of national importance, the Petitioner cites to data indicating that inclusive education, programs in which special needs students function in general education classrooms, benefits children. The Petitioner also cites to data stating that approximately five million students in the United States are learners of the English language. Overall, on appeal, the Petitioner makes assertions related to the importance of special needs and bilingual education, and the need for skilled teachers in these areas. We do not question the importance of special needs and bilingual education but in assessing national importance, we focus, not on the specific area or field at issue, but the specific endeavor a petitioner proposes to undertake. *See id.* Here, the Petitioner has not demonstrated that the potential prospective impact of her specific endeavor would impact the special needs and bilingual education industries more broadly, with national or global implications.

The Petitioner asserts the United States has a need for her as the country faces teaching shortages and high teacher turnover. The Petitioner contends that addressing teacher shortages, particularly in the specialized areas in which she teaches, is critical for the educational system. However, a shortage of workers in a particular occupation or skill does not render the Petitioner's proposed endeavor nationally important under the *Dhanasar* framework. *See id.* Rather, such shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. The Petitioner also cites to data indicating there is a gap in demographic match between teachers and students, with minority students doing better in school when exposed to teachers of the same race or ethnicity. The Petitioner asserts that as a Brazilian who speaks Portuguese, she would add needed racial diversity amongst the teachers. However, the Petitioner has not established that adding to the racial diversity of the teaching staff at her own school would have implications beyond her students and colleagues.

The Petitioner asserts schools often rely on inclusion teachers, such as herself, to implement inclusion programs in classrooms. The Petitioner contends she has wide experience in inclusive education, as it is a robust part of Brazil's educational agenda, the environment in which she was trained and employed as a teacher. However, the Petitioner's assertions regarding her background and experience relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. As discussed, although we acknowledge the merit of the proposed endeavor, the Petitioner has not shown the endeavor has broader implications beyond the Petitioner's organization or students. The Petitioner does not allege that her proposed endeavor has significant potential to employ U.S. workers or otherwise will have substantive positive economic effects. *See id.* (considering, as relevant to national importance, whether the proposed endeavor stands to have "positive economic effects, particularly in an economically depressed area," or "significant potential to employ U.S. workers"). Overall, the Petitioner has not met her burden of demonstrating her proposed endeavor is of national importance.

B. Additional *Dhanasar* Prongs

Because the documentation in the record does not establish the national importance of the proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not

demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[6]

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude the Petitioner has not demonstrated eligibility for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.