U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29666798

Date: JUL. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established eligibility for the underlying immigrant classification. The Director further concluded that the Petitioner had not established 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

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). In addition, "profession" is defined as 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).

To establish eligibility for a national interest waiver, petitioners must 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. Section 203(b)(2)(B)(i) of the Act. In addition,

[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.

petitioners must show the merit of a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if:

- The proposed endeavor has both substantial merit and national importance,
- The individual is well-positioned to advance the proposed endeavor, and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree. Prior to issuing her decision, the Director issued a request for evidence (RFE) informing the Petitioner that the evidence to establish that he had obtained the required five years of progressive experience in addition to his bachelor's degree was insufficient. After reviewing the evidence, the Director denied the petition, concluding that while the Petitioner had a bachelor's degree, he had not established the required five years of progressive experience "in the specialty." *See* 8 C.F.R. § 204.5(k)(2); 204.5(g)(1). We will therefore first consider whether the evidence establishes the Petitioner's eligibility for the second preference immigrant classification as a member of the professions holding an advanced degree.

A. Member of the Professions Holding an Advanced Degree

With the filing of his petition, the Petitioner provided an academic and experience evaluation letter, copies of his diploma and school records, a work experience letter, and copies of the articles of incorporation for three companies with which the Petitioner has been involved. The Petitioner provided a business plan with his petition in which he stated that he endeavored "to enter the U.S. by establishing and operating a Training Center which will provide high-level training services, and soccer and lacrosse equipped fields." The Petitioner indicated that his company "will offer training programs, equipment and spaces to conduct its operation." In response to the Director's RFE, the Petitioner provided a letter from an accountant familiar with the Petitioner's companies, a letter from the President of the [redacted] in Brazil, and a letter from A-R-A-,[3] an associate professor. The record reflects that the Petitioner obtained a bachelor's degree in physiotherapy from [redacted] in Brazil in 2004, which the Director concluded is the equivalent of a U.S. bachelor's degree. As noted by the Director, the work experience letter indicates that the Petitioner worked for a soccer team in Brazil from "March 2000 to July 2000" and is insufficient to establish the Petitioner's experience, as it lacks specific information regarding the Petitioner's dates of employment and duties.

The letter provided from S-P-, the Petitioner's accountant, indicates that he has familiarity with the Petitioner's establishment of a gym in 2001, and states that the Petitioner's business "endured until 2010, when [the Petitioner] was invited to participate in another challenging venture and sold the

[2] *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).

[3] We use initials to protect the identity of individuals.

facilities, retaining the property that continues to be used for the same purpose as its foundation." S-P- goes on to discuss the Petitioner's involvement with an energy drink brand in 2010, and notes that the Petitioner "led the financial management" and notes that the company's success, along with the Petitioner's real estate acquisitions and further establishment of a brewery.

The letter from A-G-R-S-, the President of the [redacted] in Brazil, indicated that the Petitioner established a physiotherapy clinic and a "modern gym," and that the Petitioner's gym business has "favor[ed] [their] community for over 20 years." When comparing the letter from S-P- with the letter form A-G-R-S-, it is not clear how long the gym has been open, or for how long the Petitioner was involved, as S-P- indicated that the Petitioner sold the facilities in 2010 and A-G-R-S- indicated that the gym had been in the community for over 20 years. The letter from A-R-A- stated that the Petitioner "was hired in 2011 to implement the Partners for Excellence Program," which was related to the Petitioner's other companies, and indicated that the Petitioner was responsible for "the Financial sector's Management" and that A-R-A- "followed the group's monthly meetings" for more than 10 years, where the Petitioner "actively participated in various internal seminars taught by professors" from the foundation. However, these letters did not provide specific dates of the businesses with which the Petitioner was involved or describe in detail his duties and involvement with them. Regarding the copies of the articles of incorporation provided by the Petitioner, they also do not include specific dates, details, and duties for which the Petitioner was responsible. The Petitioner further had submitted numerous certificates of completion for training courses; however, the total hours represented on these certificates does not account for at least five years of progressive experience in his specialty.

In our de novo review of the record, the Petitioner has not provided sufficient evidence to establish his five years of progressive experience. Evidence relating to experience has specific requirements, as defined at 8 C.F.R. § 204.5(g)(1), and although it also notes that if such evidence is unavailable, we will consider other documentation relating to a petitioner's experience, each of the letters provided include only general details, without specific dates or duties of the Petitioner. Although on appeal the Petitioner contends that the Director failed to acknowledge his resume, a self-reported resume without corroborating evidence is insufficient for us to conclude that a petitioner has established his experience by a preponderance of the evidence. As such, we conclude that the Petitioner has not established his eligibility for the second preference immigrant classification as a member of the professions holding an advanced degree.[4]

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant

[4] The Director also conducted an analysis of whether the Petitioner qualified as an individual of exceptional ability. On appeal, the Petitioner contends that he never requested to be considered under this classification, and only wished to be considered a member of the professions holding an advanced degree. As such, we will not review the Director's determinations on this matter.

classification. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.