U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32384131

Date: JUL. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a systems analyst, 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 record did not establish that the Petitioner was eligible for EB-2 classification or that he qualified for a national interest waiver. 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

The Petitioner is a systems analyst. He intends to advance his career in this field and proposes to offer IT solutions and services to private and public enterprises. The Director denied the Petition, finding that the Petitioner had not shown a sufficient single-course length of study in Brazil to demonstrate receipt of an advanced degree, as the provided transcript showed only five semesters of coursework. The Director acknowledged the Petitioner's significant non-university education, but indicated that additional coursework or practical experience could not be substituted for a degree equivalent to at least a bachelor's degree.

On appeal, the Petitioner argues that he satisfies the advanced degree requirement.[2] He contends that he has a bachelor's degree in information systems, that he has accrued 18 years of work experience, and that he has completed a substantial amount of additional coursework beyond his bachelor's degree. As a result, he asserts that he obtained a degree equivalent to a U.S. bachelor's degree and five years of progressive experience in his speciality, as required for EB-2 classification. We disagree; the Petitioner has not established eligibility for EB-2 classification based on the completion of an advanced degree.

A. The Petitioner Has Not Demonstrated that He Obtained an Advanced Degree

The Petitioner argues that he has a qualifying degree, as he obtained a *bacharel* diploma from an accredited university. He contends that his university transcript shows four years of coursework equaling 3588 hours. He notes that the coursework began in 2009 and was completed in 2012, and he argues that this equals four calendar years of coursework, running from January to December of each year. He asserts that the Director erred in treating the coursework as five semesters of work and, therefore, finding it not equivalent to a four-year degree. The Petitioner also relies on two opinions from an accreditation evaluation agency that he has obtained at least a bachelor's degree.

The evidence on record does not establish by a preponderance of the evidence that the Petitioner obtained the equivalent of a U.S. bachelor's degree in a single course of study. The Petitioner has demonstrated that he obtained a *bacharel*. According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE):

[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 record does not reflect the Petitioner sought to qualify as an individual of exceptional ability, and this has not been argued on appeal. We therefore limit our analysis to his qualification as an advanced degree professional.

> The 3-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The 4- or 5-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

AACRAO, *Titulo de Bacharel/Grau de Bacharel (Title of Bachelor)*, https://www.aacrao.org/edge/country/credentials/credential/brazil/t%C3%ADtulo-de-bacharel-grau-de-bacharel-(title-of-bachelor) (incorporated into the record).[3]

The Petitioner's diploma does not specify a length of study. The Petitioner asserts that his degree is equivalent to four years as the transcript covers calendar years, rather than semesters, of study. However, we have not been provided with information from the educational institution to support this contention. Furthermore, the provided transcript is in line with the Director's reading that it breaks courses down by semester. The transcript includes a column for "Letive Periods" and another for "Semesters." Each "Letive Period" contains a date and is listed as corresponding to a particular semester. The coursework taken between 2009 and 2011 is listed as "2009/1," "2010/1," and "2011/1" and corresponds to semesters one through three. By contrast, there are two separate designations for 2012: "2012/1," which is listed as semester four, and "2012/2," listed as semester five. Therefore, the dates listed appear to correlate with semesters rather than one ongoing, year-long course of study as the Petitioner contends. As the transcript shows 5 semesters, the course of study does not equate to four years.

We have reviewed the accreditation evaluators' opinions that the Petitioner's course of study to obtain the *bacharel* equates to either a U.S. bachelor's or master's degree. The first letter prepared by GEO Credential Services stated that the Petitioner had completed four years of coursework without providing a breakdown of how the years of study were calculated. Although this report indicated that the length of study for a *bacharel* can vary, it did not indicate how the length of the Petitioner's specific program was analyzed. A follow-up analysis from GEO Credential Services noted that "EDGE specifically lists the *Bachelor* degree from Brazil to represent attainment of a level of education comparable to a Bachelor's degree in the United States." This report appears to conclude that any *bacharel* degree would be equivalent to a U.S. bachelor's degree. This analysis is incomplete, as it does not consider the existence of three-year *bacharel* degrees or specify that only four- or five-year degrees are equivalent to a U.S. bachelor's degree. Because of these limitations, the evaluation letters are of limited assistance in evaluating the Petitioner's educational credentials and we afford them limited weight.

The Petitioner's reliance on his completion of 3588 credit hours is also insufficient to establish completion of a four-year degree based on the current record. Counsel for the Petitioner asserts that this credit total equates to a four-year degree, but unsubstantiated assertions of counsel are not evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion

[3] EDGE was created by ACCRAO, a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. See AACRAO, *Who We Are*, https://www.aacrao.org/who-we-are; *see also* Viraj, LLC, v. U.S. Att'y Gen., 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The Petitioner has not provided us with information from his university or another source within the Brazilian higher education system equating a particular number of credit hours with a determined length of study.

The remaining evidence of education is not sufficient to meet the advanced degree requirement for EB-2 classification. While the Petitioner has taken a significant number of additional courses, he has not claimed that these were related to his university degree. In addition, the Petitioner noted that he was pursuing a master's degree, but the record does not reflect that this degree was complete at the time this petition was filed. As the Petitioner's university coursework is not equivalent to a U.S. bachelor's degree, he is unable to establish Eligibility for EB-2 classification.

B. The Petitioner Has Not Shown Five Years of Progressive Experience

Even if the Petitioner were to demonstrate the completion of a qualifying advanced degree, the record does not show five years of progressive work experience in the specialty following receipt of the degree. *See* 8 C.F.R. § 204.5(k)(2). On appeal, the Petitioner has argued that the requisite experience was obtained between late 2012 and 2016, while he worked for [redacted] He then worked for [redacted] from 2018 to 2020. He has submitted letters from these employers confirming that he worked for them full time as a "support analyst." However, these letters do not provide details of the Petitioner's duties and responsibilities, and we are unable to conclude that this employment meets the regulatory requirements.[4]

Because the documentation in the record does not establish the Petitioner's eligibility for EB-2 classification, we reserve opinion on whether the Petitioner could demonstrate eligibility for a national interest waiver under the *Dhanasar* precedent decision. *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not shown that he is an advanced degree professional and, therefore, has not established his initial eligibility for EB-2 classification.

ORDER: The appeal is dismissed.

[4] The record contains letters of support from various individuals that outline some of the Petitioner's projects. However, many of these letters do not clearly outline either the timeframe of this work or for which companies the work was completed. In addition, they appear to be authored by former coworkers rather than company representatives or supervisors who can attest to the Petitioner's work assignments. The letters that come from former employers appear to describe freelance work completed by the Petitioner on a sporadic basis rather than proof of five years progressive experience.