U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31491554

Date: JUNE 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business administrator, 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 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 business administrator who proposes to direct a human resources consulting and recruitment company in Florida. 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 she had five years of progressive experience in her specialty because she did not submit letters from her current or previous employers.

On appeal, the Petitioner claims her Brazilian Work and Social Security Digital Permit and recommendation letters show she has over five years of post-baccalaureate progressive experience in her specialty. To establish an equivalent to a master's degree and qualify for EB-2 classification as an advanced degree professional, 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. 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner's Work and Social Security Digital Permit is not a letter from a current or former employer.

The Petitioner also submitted letters from seven colleagues who worked with her at the [redacted] and [redacted] None of these individuals identify themselves as the Petitioner's employer at either of these institutions. On appeal, the Petitioner identifies [redacted] and [redacted] as her former employers. Their letters do not state that they employed the Petitioner. Mr. [redacted] states he met the Petitioner at [redacted] where they "were both working." He states he was the Technical Responsible supervising teams in the oil and gas field while the Petitioner was an Administrative Assistant. Mr. [redacted] does not state that he supervised the Petitioner or otherwise employed her. Ms. [redacted] states she worked with the Petitioner at [redacted] where she is a security technician, and the Petitioner was a human resources assistant. Ms. [redacted] does not indicate that she ever supervised or otherwise employed the Petitioner. Ms. [redacted] states she met the Petitioner at [redacted] where they "both occupied the same position as administrative assistants." Ms. [redacted] also does not indicate that she ever supervised or otherwise employed the Petitioner. The Petitioner does not assert that letters from her employers at the [redacted] or other institutions are unavailable.

Although she submitted letters from seven colleagues praising her past work, the Petitioner did not submit letters from her current or former employers as the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires to show at least five years of progressive post-baccalaureate experience in the specialty. Consequently, the Petitioner has not established that she has the equivalent of a master's degree and is eligible for EB-2 classification as an advanced degree professional. The Petitioner has not demonstrated that she is a member of the professions holding an advanced degree and she does not

claim to be an individual of exceptional ability. Accordingly, the Petitioner has not established that she qualifies for EB-2 classification.

As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her 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.