U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31455884

Date: JUNE 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 Petitioner did not establish that he qualifies for the underlying EB-2 classification or 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. In addition to the definition of "advanced degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." [1]

If a petitioner demonstrates EB-2 eligibility, they must then establish 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

[1] The letters from current or former employer(s) shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. 8 C.F.R. § 204.5(g)(1).

interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion, 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.

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability.[2] We adopt and affirm the Director's finding as it relates to EB-2 classification. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner filed the petition in October 2022. The Petitioner claimed to qualify for the EB-2 classification as an advanced degree professional. In January 2023, the Director issued a request for evidence. The Director determined that the Petitioner's foreign degree represented attainment of a level of education comparable to a bachelor's degree in the United States. However, the Director noted that the Petitioner had not submitted any employment letters showing that he had at least five years of progressive post-baccalaureate experience in the specialty. The Director instructed the Petitioner to submit letter(s) from current or former employer(s) showing that he had at least five years of progressive post-baccalaureate experience in the specialty.[3] In response to the Director's request, the Petitioner stated in part that he was submitting "employment verification letters that detail his progressive post-baccalaureate experience over the years." However, the record does not indicate that the Petitioner submitted any employment verification letters. The Director denied the petition in part, finding that despite the Petitioner's assertion to the contrary, he had not submitted any letters from current or former employers showing that he had at least five years of progressive post-baccalaureate experience in the specialty.[4] On appeal, the Petitioner contends that he submitted employment verification letters in response to the Director's request for evidence. He also maintains that he has established eligibility for EB-2 immigrant classification.

As noted by the Director and despite the Petitioner's assertions to the contrary, the record does not establish that the Petitioner submitted any employment letters in response to the Director's request for evidence to establish that he had at least five years of progressive post-baccalaureate experience in the specialty pursuant to the regulation at 8 C.F.R. § 204.5(g). Nor has the Petitioner submitted such letters on appeal to address this deficiency.

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[2] As the Petitioner does not claim to be an individual of exceptional ability, we will not address it further.

[3] The Director also requested additional documentation in support of the Petitioner's claim that he qualifies for a national interest waiver.

[4] Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The Petitioner has not demonstrated eligibility for the advance degree professional immigrant classification based on the current record. Because the petition cannot be approved without an underlying determination that the Petitioner qualifies for EB-2 classification, we will reserve discussion of the Petitioner's national interest waiver claim under the *Dhanasar* framework.[5]

ORDER: The appeal is dismissed.

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 the noncitizen is otherwise ineligible).