U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30233199

Date: MAR. 05, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a dental surgeon and an entrepreneur, seeks second preference immigrant classification (EB-2) 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 immigrant 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 she qualified for the underlying EB-2 classification as an advanced degree professional, but did not evaluate whether the Petitioner qualified as an individual of exceptional ability. The Director also did not analyze the evidence related to the Petitioner's request for a national interest waiver because such analysis was not necessary to the finding of ineligibility. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To establish eligibility for a national interest waiver, a petitioner must first 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.

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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 (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 the proposed endeavor; and
- On balance, waiving the requirements of a job offer and a labor certification would benefit the United States.

Id. at 889.

The Director concluded that the Petitioner does not qualify for the EB-2 classification as an advanced degree professional. The Director determined that although the endeavor of working as a dental surgeon requires a doctoral degree in the United States, the Petitioner does not have a United States doctorate degree or a foreign equivalent as required by 8 C.F.R. § 204.5(k)(2). Upon de novo review, we will withdraw the Director's finding on this issue and conclude that the Petitioner is a member of the professionals holding an advanced degree.[2]

The record shows that the Petitioner earned the title of Dental Surgeon (*Titulo de Cirurgia Dentista*) in 2011 from the [redacted] in Brazil and worked as a dentist or dental surgeon since 2012. The credential evaluation submitted by the Petitioner indicates that the dental surgeon degree from Brazil is a U.S. equivalent of a first professional degree in dentistry and considers this program "equal or exceed the duration of a bachelor's degree, but in a field of study, Dentistry, not offered at the undergraduate level in the United States."

We further consulted the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge (last visited March 1, 2024). The database indicates that *Titulo de Cirurgia Dentista* represents the attainment of a level of education comparable to a first professional degree in dentistry in the United States, which is a Doctor of Dental Surgery (D.D.S.) or Doctor of Dental Medicine (D.M.D.) degree. Therefore, the Petitioner has established that she qualifies as a member of the professions holding an advanced degree, and the sole remaining issue is whether she merits a national interest waiver.[3]

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[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] We note that our decision to withdraw the Director's decision on this issue is independent of the Petitioner's assertion on appeal - that her endeavor is to open and manage a dental clinic, as presented in her business plan, and the Director did not properly evaluate the advanced degree requirement in the context of her entrepreneurial endeavor.

[3] Although the Petitioner previously claimed that she qualifies as an individual of exceptional ability, she does not raise this issue on appeal, and therefore, we consider the issue abandoned or waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

With respect to the national interest waiver, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The Director stated that because the Petitioner "does not qualify as a professional, further analysis of whether the petitioner is eligible for a national interest waiver under the EB-2 classification will serve no meaningful purpose" and did not analyze the Petitioner's proposed endeavor or her eligibility under the requisite three prongs of the *Dhanasar* analytical framework.

The Petitioner's proposed endeavor as explained in the initial filing is to "work in the dentistry field, providing my services to American patients and other dental professionals" and train other professionals on "how to implement dental treatments and office administration." But in response to the Director's request for evidence (RFE), the Petitioner presented a business plan and stated that her proposed endeavor is to establish a dental clinic called [redacted] in [redacted] Massachusetts. The Petitioner claimed that "[m]y Company will provide high-quality dental solutions at affordable prices, targeting low-income individuals who lack access to dental care providers" and "offer services aim at the dental aesthetic area, tooth whitening, and crowns."

On remand, the Director should evaluate the record and identify the Petitioner's endeavor, whether it is to work as a dental surgeon, an entrepreneur of a dental clinic, or a combination of both. If the record indicates that the Petitioner made a material change to the endeavor after submitting the RFE response, the Director should determine that the entrepreneurial endeavor would not be considered, then proceed to make a finding on the Petitioner's eligibility for the national interest waiver under all three prongs of *Dhanasar* and address the Petitioner's claims and documentation regarding the national interest waiver.

Based on the foregoing, we will remand the matter for further consideration of the record, including claims and documentation submitted on appeal, and entry of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.