U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31138984

Date: MAY 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the military field, 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 eligibility for the requested EB-2 advanced degree classification. The Director declined to further consider the Petitioner's eligibility for a national interest waiver of the job offer requirement, and thus of a labor certification, as it would serve no meaningful purpose. 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 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 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.

II. ANALYSIS

The Petitioner states that he is a retired military officer with more than 23 years of experience "advising on areas of personnel management, building maintenance, and civil works, among other key specialties." His professional experience includes human resources, finance, security, and intelligence. His proposed endeavor is to direct his own company "that will operate in the guns, ammunition, parts, personal protective equipment, firefight [sic] equipment, and accessories market." He further states that his company "will provide sales consulting services to Brazilian clients, especially in the Navy, Army, air forces, armed police, and military and civil firefighters and U.S. gun manufacturing companies in order to allow them to export products made in the U.S. to clients in Brazil."

The Petitioner asserts that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree.[2] With the initial filing the Petitioner submitted evidence of his education and experience, a definitive statement, and a business plan describing his proposed endeavor and claimed eligibility for a national interest waiver. He also submitted certificates of achievement, recommendation and support letters, an expert opinion letter, and industry reports and articles discussing entrepreneurialism and military careers.

A. Member of Professions Holding an Advanced Degree

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of foreign education that he claims is equivalent to a U.S. bachelor of business administration degree with more than five years of progressive experience, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B).

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(l), (12).

[1] *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).

[2] In these proceedings the Petitioner does not assert eligibility as an individual of exceptional ability.

The record includes a *titulo de bacharel* issued to the Petitioner in July 2006 by the [redacted] The record also includes transcripts issued by the [redacted] demonstrating that the Petitioner completed three and a half years of coursework, from 2002 to 2005.

The Petitioner submitted an evaluation of his academic credentials from [redacted] senior evaluator with Highstone Client Services, dated October 25, 2018. The evaluation states that the Petitioner's *titulo de bacharel* indicates that the Petitioner "satisfied requirements substantially similar to those required toward the completion of a Bachelor of Business Administration from an accredited institution of higher education in the United States."

The Director issued a Request for Evidence (RFE), informing the Petitioner that the record did not establish that the Petitioner possessed an advanced degree to qualify for the requested EB-2 classification. The Director noted that the Petitioner's degree was a three-year degree, rather than a four-year degree. Specifically, she noted that U.S. bachelor's degrees typically require four years to complete. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977).[3]

In response to the RFE, the Petitioner referenced evidence already in the record, including copies of academic records and the evaluation of his academic credentials from Highstone Client Services. The Director denied the petition, concluding that the Petitioner did not establish that he is eligible for classification as a member of the professions holding an advanced degree. In the Director's decision, she cites to both the Petitioner's evaluation as well as to the Electronic Database for Global Education (EDGE), which is a web-based resource for the evaluation of foreign educational credentials created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[4] The Director notes that the *titulo de bacharel* is awarded after a three to five- year course of study, and that the "institution confirms the petitioner did earn a three-and-a-half year's bachelor's degree," which is not equivalent to a four-year course of study.

On appeal, the Petitioner asserts that the Director erred in concluding that he did not earn a four-year degree and that he does not qualify as an advanced degree professional. He asserts that, while he completed his education at [redacted] he previously completed courses at the [redacted] in 2000 and these courses are noted on his transcripts. He submits a new evaluation of his academic records from [redacted] senior evaluator with GEO Credential Services, dated October 30, 2023. The evaluator concludes that the Petitioner's *titulo de bacharel* is the equivalent of a U.S. bachelor's degree in business administration. The evaluation states, "the Bachelor's Degree in Business Administration described above requires an approved secondary school diploma for admission and at least four years of postsecondary study." The evaluation, however, does not specifically state how many years of study that the Petitioner completed based on a review of the transcripts.

[3] The Director determined in the RFE that the Petitioner had established that he possesses at least five years of progressive experience in the specialty.

[4] AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. *See* http://www.aacrao.org/who-we-are. USCIS considers EDGE to be a reliable source of information about foreign credentials equivalencies.

While we acknowledge that the Petitioner's academic transcripts note the completion of coursework at the [redacted] in 2000, the Petitioner's brief on appeal states that the "courses were taken to gain entrance" to the [redacted] The transcripts from the [redacted] state, "Exam Entrance: [redacted] It is unclear from the record whether the Petitioner needed to take additional coursework to gain entrance to the [redacted] as compared to the [redacted] accepting the credits to serve as part of a four-year program of study to reach a four-year bachelor's degree. The record does not include official academic records from the [redacted] demonstrating the transfer of credits toward four years of postsecondary study, or anything from the [redacted] showing acceptance toward a program of study. Neither evaluation that the Petitioner submitted addresses this point. Without the official academic records from the [redacted] we are precluded from determining that the Petitioner's study at this institution represents attainment of a level of education above completion of senior high school in the United States. And without records from the [redacted] showing acceptance of the prior studies as credit toward the degree, we cannot conclude that these courses represent additional study toward the degree.

Additionally, the issue here is not whether the Petitioner completed four years of study to earn the *titulo de bacharel*. Rather, the question is whether the Petitioner's *titulo de bacharel* program required four years of study and would be equivalent to a bachelor's degree in contrast to completion of three of four years of coursework. Here, the record does not include evidence that the Petitioner's *titulo de bacharel* required four years of study.[5]

The GEO Credential Services evaluation cites to the AACRAO EDGE. According to EDGE:

> The *3-year Titulo 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.

EDGE further states that the entry requirement for the *titulo de bacharel* is a *diploma/certificado de Ensino medio*.

The evaluation of the Petitioner's academic credentials from GEO Credential Services, while acknowledging that a bachelor's degree requires four years of postsecondary study, does not explain how the evaluator found the Petitioner's three and a half years of study to equate to the four years of study required for a U.S. bachelor's degree. The evaluation does not discuss the individual courses the Petitioner completed to meet the degree requirements. She does not discuss the transfer of credits, if any, from a prior course of study. Moreover, while the evaluator specifically cites to EDGE, she does not address the specific credential advice in EDGE for the Petitioner's credential, which concludes that the three-year *titulo de bacharel* is comparable to three years of university study in the United States rather than to a bachelor's degree.

USCIS may, in our discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable we

[5] We note that, in a previous filing [redacted], the Petitioner submitted a letter from the director of the [redacted] The letter states, "At that time, the curriculum of the Business Administration Course was offered in three and a half years."

are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011). Upon review of the record, including the Petitioner's own evaluations submitted, we conclude that the Petitioner has not established that he holds the equivalent of a baccalaureate degree from an accredited college or university in the United States. Therefore, he is not eligible for classification as a member of the professions holding an advanced degree.

The Petitioner has not established his qualification for the EB-2 classification as an advanced degree professional and is therefore ineligible for a national interest waiver. While he asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we will reserve these issues.[6]

III. CONCLUSION

The Petitioner has not established that he is eligible for classification as a member of the professions with an advanced degree or that he is otherwise eligible for EB-2 classification. The Petitioner has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("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).