U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35307944

Date: NOV. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager and credit specialist, 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 as abandoned, and initially dismissed the Petitioner's motion to reopen, but reopened the petition *sua sponte*, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), to consider anew the merits of the claim after issuance of a request for further evidence (RFE).[1] The Director subsequently denied the petition, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. The Director further determined that the Petitioner did not establish that a waiver of the job offer requirement would be in the national interest. 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).

[1] The Petitioner was permitted a period of 87 days in which to provide the requested evidence, and she submitted documentation in response to the Director's RFE.

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,[2] 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

A. Eligibility for the EB-2 Classification

The Director concluded that the Petitioner did not establish she qualifies for the EB-2 classification as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. The Director determined that the Petitioner submitted an official academic record and a credentials evaluation demonstrating that she earned the foreign equivalent of a U.S. baccalaureate degree in business administration in 2009 from a Brazilian university. The Director also found that although the Petitioner provided evidence in the form of letters from her employers, she has not sufficiently documented that she has at least five years of progressive post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Specifically, the letters attesting to her experience in the field contain unresolved inconsistencies that undermine the probative value of those letters.

The Petitioner submitted Part B of Form ETA 750, Application for Alien Employment Certification, attesting to her education and work experience.[3] Where asked to provide details regarding her prior employment, she stated she worked as a credit analyst for [redacted] from 2015 until 2018 and as a credit analyst for [redacted] from July 2011 until August 2015. The Petitioner's initial evidence included a recommendation letter from the financial director of [redacted] who confirmed her employment as a credit and collections analyst with the company from July 2015 to July 2018.

In addition, the Petitioner submitted several employment letters from individuals associated with [redacted] A letter from J-T-P-, the company's former commercial manager, stated the Petitioner worked for the company as a credit analyst from July 2015 until January 2018. A letter from M-O-,

[2] *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).

[3] The Director noted that although the Petitioner indicated on the form that she earned a master's degree in financial management in 2012 from a Brazilian university, the record does not contain any documentation showing she earned the foreign equivalent of a U.S. master's degree.

one of the company's suppliers, and a letter in response to the RFE from T-F-L- of the company's human resource department, confirmed her employment as a credit and collection analyst on a full-time basis from July 2011 to August 2015. We note an additional letter in the RFE response from T-F-M-T, [redacted] former sales consultant, states she worked with the Petitioner at [redacted] from August 2014 until September 2017.

The Director determined that the letters from [redacted] are "inconsistent" and, therefore, not sufficient to document the Petitioner's five years of progressive post-baccalaureate experience, as they contain different dates of employment. On appeal, the Petitioner does not fully address this issue. Rather, the Petitioner, through counsel, asserts that the only inconsistency is between the Petitioner's "initial resume at filing," which stated a "start date" with [redacted] of "June" 2011,[4] and the letters from [redacted] that indicate a start date of July 2011. The Petitioner states that "[u]pon realizing this minor clerical error, we submitted an updated resume in our response to the RFE correcting the start date to July [] 2011." Although the Petitioner contends that the Director failed to acknowledge her updated resume, a self-reported resume without corroborating evidence is insufficient for us to conclude that a Petitioner has established her experience by a preponderance of the evidence. The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Due to the incongruous and overlapping employment timeframes in the above employment letters, the submitted letters do not establish that the Petitioner acquired at least five years of progressive experience in her specialty from the date she earned her degree in 2009 up to the date she filed her petition in April 2019. As a result, the record does not sufficiently document the Petitioner's five years of post-baccalaureate employment through letters from her current or former employers, as required by 8 C.F.R. § 204.5(k)(3)(i)(B). Moreover, although the Petitioner's RFE response provides evidence of more recent work experience beginning in 2020 with [redacted] eligibility for the requested classification must be established at the time of filing. 8 C.F.R. § 103.2(b)(1).

Based on the above, the evidence does not sufficiently establish that the Petitioner has at least five years of progressive, post-degree experience in her specialty, and therefore she does not qualify as a member of the professions holding an advanced degree. [5]

B. National Interest Waiver

The Petitioner has not established her qualification for EB-2 classification as a member of the professions holding an advanced degree. She is therefore not eligible for a national interest waiver. While the Petitioner asserts on appeal that she meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not

[4] We note that the Petitioner's initial resume in the record before us indicated a start date with [redacted] of 2011, not June 2011 as asserted.

[5] The Director also conducted an analysis of whether the Petitioner qualifies for EB-2 classification as an individual of exceptional ability. However, the Petitioner did not claim that she is an individual of exceptional ability, and her appeal does not acknowledge the Director's adverse determination on this issue. As such, we will not review the Director's determination on this issue.

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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she is eligible to be classified as a member of the professions holding an advanced degree or that she is otherwise eligible for EB-2 classification. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.