U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34816812

Date: OCT. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks second preference 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 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 qualified for the EB-2 classification as a member of the professions holding an advanced degree, but that he had not established 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 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). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this matter. The Director's conclusions with respect to the Petitioner's eligibility for EB-2 classification appear to conflict with evidence in the record rendering the decision insufficient for appellate review. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EB-2 CLASSIFICATION

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. The regulation at 8 C.F.R. § 103.2(b)(1), requires a petitioner to establish eligibility for the benefit sought at the time of filing the petition.

The Petitioner filed this petition in October 2023. At the time of filing, the Petitioner was a graduate student in an MBA program at [redacted] with expected completion date in December 2023. Because the Petitioner had not completed his MBA program at the time of filing, to be eligible for EB-2 classification as an advanced degree professional, he must establish he holds a U.S. baccalaureate degree (or foreign equivalent) followed by at least five years of progressive, post-baccalaureate experience in the specialty, which together is considered equivalent to a U.S. master's degree. The Petitioner provided evidence to establish his completion of a bachelor's degree in accounting and related coursework from a Nigerian university and relies on a combination of his bachelor's degree and several years of work experience as a public accountant to establish his eligibility for EB-2 classification.

When the Director issued their request for additional evidence (RFE), they concluded that the Petitioner established his eligibility for EB-2 classification as a member of the professions holding an advanced degree, stating "t[]he petitioner provided his diploma for his Bachelor of Science in Accounting. The degree was issued from Babcock University on June 4, 2006." But the Petitioner did not provide any evidence to establish his foreign degree is equivalent to a U.S. bachelor's degree.[1] In addition, he must establish his U.S. baccalaureate degree (or foreign equivalent) was followed by at least five years of progressive, post-bachelor's experience in the specialty, which together is considered the equivalent of an advanced degree.

We note that the Petitioner provided his professional resume, listing his bachelor's degree (completed in June 2006), and work experience starting in 2007. While the Petitioner's resume is helpful to our understanding of his professional background, a resume alone is insufficient to meet his burden to demonstrate the required five years of progressive, post-bachelor's experience in the specialty. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Instead, U.S. Citizenship and Immigration Service (USCIS) requires letter(s) from current or former employer(s) that include the name, address, and title of the writer, with a specific description of the duties performed to establish the Petitioner's post-baccalaureate work experience. The Petitioner provided a letter to substantiate his work experience, which verifies that he worked at [redacted] in West Africa from April 2019 to May 2022 as a financial controller. The letter also mentions that he worked as a commercial finance manager. However, no dates were provided, and no details of his actual job duties for either position were included. *Id.* Thus, the letter is insufficient to understand the nature of his experience in the years following completion of his bachelor's degree. *Id.* Moreover, the letter only describes his work between April 2019 and May 2022, which is not a five-year period. *Id.* Finally, we note that although the Petitioner has independently verified his membership in the Institute of Chartered Accountants of Nigeria, this evidence is insufficient to establish that he has five years of post-baccalaureate, progressive work experience in a specialty, such that he can be classified as an EB-2 advanced degree professional. *Id.* Taken together, this evidence is insufficient to meet the Petitioner's burden of demonstrating his eligibility for EB-2 classification. *Id.*

[1] For purposes of determining whether a foreign degree is equivalent to a U.S. bachelor's degree, USCIS reviews the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), to confirm the claimed equivalency of a foreign degree. *See* https://www.aacrao.org/edge.

II. THE ENDEAVOR'S NATIONAL IMPORTANCE

If the Director concludes on remand that the Petitioner has demonstrated categorical eligibility for classification as an employment-based, EB-2 second preference permanent immigrant, they may consider if the Petitioner merits 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 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 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.

Upon de novo review, we note that the Petitioner's proposed endeavor to work as a public accountant for businesses and other clients does not appear to meet the first prong of the *Dhanasar* framework, which requires a petitioner to establish their endeavor is of substantial merit and national importance. The Director concluded that the Petitioner's endeavor has substantial merit. We agree. However, the record as presently constituted does not appear to establish the endeavor's national importance.

Throughout these proceedings, the Petitioner asserts that his endeavor is of national importance because it will lead to economic growth and efficiency for the entities to which he will provide his public accounting services. The Petitioner asserts that because he is proficient in artificial intelligence and machine learning tools, he is able to automate mundane tasks for businesses, and that with his expertise, this will lead to more optimization of investment decisions, increased innovation to attract investment, streamlining of business operations while minimizing risks and increasing fraud detection. The Petitioner cites to a program he created at a former employer to automate their accounting process, and which he asserts led to increased revenue. We acknowledge that the field of accounting is important, and that artificial intelligence and machine learning tools are helping businesses automate processes. We further acknowledge the Petitioner's evidence demonstrating that there is a shortage of workers in his field. However, shortages of qualified workers are directly addressed by the U.S. Department of Labor through the labor certification process. And, as we explained in our decision in *Dhanasar*, merely working in an important field or profession is insufficient to establish the national importance of the proposed endeavor. *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* Here, the Petitioner's assertions do not appear sufficiently detailed or probative to establish the national importance of his proposed endeavor. *Matter of Chawathe*, 25 I&N Dec. at 375-76; *and see 1756, Inc. v. U.S. Att'y Gen.*, 745 F.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts to conclude the national interest waiver determination is discretionary in nature).

Suppl. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

III. CONCLUSION

For the above reasons, we will withdraw the Director's decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner's appeal, and determine whether he has established eligibility for the underlying classification as an advanced degree professional and whether he merits an exercise of favorable discretion under the *Dhanasar* analytical framework to waive the requirement of a job offer and thus the labor certification. The Director may request any additional evidence considered pertinent to the determination prior to issuing 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.