U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33617113

Date: SEP. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 record did not establish that the Petitioner was eligible for EB-2 Classification or a national interest waiver as a matter of discretion. 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).

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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. *Matter of Dhanasar* provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is an entrepreneur who wants to create a start-up offering free higher education classes using artificial intelligence classroom technology. The Director determined that the Petitioner did not establish his eligibility for the EB-2 classification. Specifically, the Director determined that the record does not establish that the Petitioner is a member of the professions holding an advanced degree, as the Petitioner "[n]ever provided official records from school." On appeal, the Petitioner contends that this is incorrect and that he did provide "an official document from the school." Upon de novo review, we conclude that the record does not establish the Petitioner is a member of the professions holding an advanced degree.

The Petitioner has not submitted relevant, probative, and credible evidence, to establish eligibility as a member of the professions holding an advanced degree. *See Matter of Chawathe,* 25 I&N Dec. at 376. As discussed above, an advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). The Petitioner submitted a letter from the [redacted] in Israel stating that he completed a master of science degree. While this letter states that the Petitioner has a foreign master's degree, it is not corroborated by other official documents such as diploma or transcript. The Petitioner also submitted an academic evaluation that states that the Petitioner's degree equivalent to a U.S. master's degree. However, an academic evaluation is advisory. *Matter of Caron Int'l, Inc.,* 19 I&N Dec. 791, 795 (Comm'r 1988). We may favorably consider them when they have provided a credible, logical, and well-documented case for an equivalency determination. *See generally* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policy-manual. This academic evaluation does not meet this standard. The author states that they have "reviewed the curriculum of this program," however, the curriculum has not been provided for our review. The author states that the Petitioner's degree is the equivalent of a U.S. master of science degree but does not provide specific details on how they reached this conclusion. For example, they do not compare the number of credit hours the Petitioner completed to the number of credit hours needed to complete a U.S. master of science degree. In addition, the author does not specifically compare the courses the Petitioner completed with the courses needed for a U.S. master of science degree. Therefore, we do not find the academic evaluation to be persuasive and we

[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).

cannot conduct our own analysis as the documents in the record do not contain enough information regarding the Petitioner's degree and its U.S. equivalency.

Lastly, the record does not sufficiently establish that the Petitioner is a member of the professions under section 101(a)(32) of the Act. To qualify for EB-2 classification, in addition to holding an advanced degree, the Petitioner must also establish they are a member of the professions. As stated above, a profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[3] 8 C.F.R. § 204.5(k)(2). The record does not sufficiently establish what profession the Petitioner holds. For example, the Petitioner listed his occupation as "entrepreneur" on the petition, however, an entrepreneur alone would not be considered a profession under the regulatory definition since there is no established educational requirement to become an entrepreneur. Further, the proposed endeavor itself is not clear on the Petitioner's role such as whether he is an inventor, a creator of the idea or technology, or an educator. Without more information on the proposed endeavor and the Petitioner's role, we cannot determine whether he is a member of the professions. Therefore, the record does not establish that the Petitioner is eligible for EB-2 classification as a member of the professions holding an advanced degree.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established his qualification for the EB-2 classification as a member of the professions holding an advanced degree and is therefore ineligible for a national interest waiver. The Petitioner discusses his eligibility for a national interest waiver on appeal, however, we decline to reach any further conclusions as it would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 applicant did not otherwise meet their burden of proof).

III. CONCLUSION

We conclude that the Petitioner has not established by a preponderance of the evidence that he qualifies as a member of the professions holding an advanced degree, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[3] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.