U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19976098

Date: DEC. 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In addition, the regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. The Director concluded that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree. A review of the record,

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[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

however, does not support such a determination. For the reasons discussed below, we withdraw the Director's conclusion on this issue.

In addition to the definition of "advance degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

The Petitioner initially submitted a copy of her diploma and transcript from [redacted] in Brazil and an "Evaluation of Education" from [redacted] which concludes that the Petitioner holds the equivalent of a four-year bachelor's degree in business administration. The Director issued a request for evidence indicating that, based upon the transcript, the Petitioner appeared to hold a three-year bachelor's degree. In response, the Petitioner submitted additional information documenting the Petitioner's transfer to [redacted] and subsequent return to [redacted] While the evidence demonstrates the [redacted] accepted transferred credits, the documentation does not sufficiently establish that the [redacted] accepted any transferred credits. For example, although the transcript's section entitled "subtitles" part 2 indicates that the letter "T" stands for "TRANSFERRED CREDITS," the "T" notation does not appear on the transcript from [redacted] It is also unclear whether the evaluator considered any information related to the transfer, or was even aware of it. In light of the above, the Director should first determine whether the Petitioner has established that she holds the foreign equivalent of a bachelor's degree.

Further, as the Petitioner does not claim, and the record does not establish, that she holds the foreign equivalent of an advanced degree based upon her education alone, we must also look to letter(s) from the Petitioner's current or former employers to demonstrate that she has the required five years of progressive post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3)(i)(B). While we have reviewed the two employment verification letters and "Brazilian Official Work Booklet" (work booklet) which include the name of her employers, job titles and dates of employment, they do not include any information regarding her job duties. Therefore, if the Director concludes that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree, the Director should then determine whether the Petitioner has established that her experience was progressive. 8 C.F.R. § .204.5(k)(3)(i)(B).

We would also note inconsistencies between the information provided in the employment documents and Form ETA-750B, Application for Alien Employment Certification, which was signed under penalty of perjury. For example, although the Form ETA 750-B indicates that the Petitioner was employed by [redacted] as a "financial analyst" from November 2013 until December 2016, both the employment verification letter and work booklet list her dates of employment as January 19, 2015 through December 30, 2016. According to the work booklet, the Petitioner was employed by [redacted] as a "costs analyst" from November 4, 2013 until December 31, 2014. Similarly, although the petitioner indicated that she was employed as a "financial analyst" at [redacted] the work booklet lists her job title as a "documents analyst 3."

The Petitioner must resolve the above inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

B. *Dhanasar* Analysis

Regarding the Petitioner's remaining claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner's statements reflect her intention to continue working in her field in the United States, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently extend beyond her future employer(s) and clients such that it would impact U.S. interests or the financial industry more broadly at a level commensurate with national importance. In addition, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider anew whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest waiver cases. The Director may request any additional evidence considered pertinent to the new determination.

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