U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20629488

Date: JUN. 07, 2021

Appeal of Nebraska 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 an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualifies as a member of the professions holding an advanced degree, the record did not establish that the proposed endeavor is of national importance, that she is well positioned to advance her endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver. On appeal, the Petitioner submits a brief and additional evidence to assert that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. –

(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.

(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.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

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). 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). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest

waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Advanced Degree Professional

The record reflects that the Petitioner possesses two foreign degrees from Nigeria, both of which are labeled "bachelor" degrees. Although the Petitioner submitted accompanying academic equivalency evaluations from Educational Credential Evaluations, Inc., these evaluations do not contain an explanation for the U.S. equivalency conclusions reached by the evaluation service provider. For instance, the evaluations contain the U.S. academic equivalents for the Petitioner's grades and credit hours, but no reference to the resources consulted or how Educational Credential Evaluations, Inc. determined the U.S. equivalency of her Nigerian coursework. Nevertheless, the evaluation states that the Petitioner has the equivalent of a U.S. bachelor's degree and six years of study in a medical program. The evaluation does not state that she has the U.S. equivalent of a Doctor of Medicine degree. In addition, the evaluations are unsigned, which further reduces their overall probative value. In our discretion, we may use an evaluation of a person's foreign education as an advisory opinion. However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. See Matter of Sea, Inc., 19 I&N Dec. at 820. Here, the evaluations are unsigned and do not include explanations for the conclusions reached. Accordingly, we accord these evaluations little weight.

The Petitioner claimed on her Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver) to have an "advance degree" as a "medical doctor." She also stated in her supporting letter that, "I am a medical doctor (MD)." However, due to the deficiencies in the academic equivalency evaluations noted above, the record is insufficient to establish that the Petitioner possesses the foreign equivalent of U.S. Doctor of Medicine degree. In addition, the record is insufficient to establish that she is licensed to practice medicine in the United States. Although she has now passed Steps 1, 2, and 3 of the United States Medical Licensing Examination (USMLE), her USMLE transcript reflects several attempts over a two-year period before she achieved passing scores. As some states require passing USMLE scores to have been achieved within a certain number of attempts or within a certain timeframe in order for the examination results to be considered valid for licensure, it is unclear from the record as currently constituted whether the Petitioner's attempts and timeframe qualify her to practice medicine in any U.S. state. While certainly important, the Educational Commission for Foreign Medical Graduates (ECFMG) certificate is not evidence of licensure to practice medicine, either. Finally, the record reflects that her medical license from Nigeria expired in 2013. Thus, while the Petitioner may claim to be a "medical doctor," it is unclear whether she can legally practice medicine anywhere in the world, let alone anywhere in the United States.

The Petitioner submitted her initial Form I-140 petition in February 2020. To evidence her qualifications, the Petitioner provided an online printout of an unofficial transcript containing no identifying information concerning the academic institution from which it originated. She also included a certificate issued by the Nigerian Seventh-Day Adventists of Southern California, which recognizes her master's degree in business administration issued by [redacted] University. However, [redacted] University did not issue this certificate. Nevertheless, the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also determined that the Petitioner did not establish that she is a physician. We agree with the Director that the evidence does not establish that the Petitioner is qualified to practice medicine in the United States. However, on appeal, the Petitioner submits a new transcript evidencing a U.S. master's degree in business administration (MBA) from [redacted] University in California. The record does not contain a copy of a U.S. diploma regarding this claimed course of study, which the Petitioner should be prepared to submit in any future filings. Even if we accept the transcript as evidence sufficient to establish that she has an advanced degree, this would not be evidence sufficient to establish that she is a physician.

B. Proposed Endeavor

In her initial filing, the Petitioner provided significant information concerning her past work, which included medical rotations in Nigeria and research as a student. She provided additional information about her employment at the time of filing, which involved quality assurance duties with an in-home hospice care company. However, the Petitioner did not fully complete her initial Form I-140, as she did not state what her U.S. job title would be, nor did she provide a job description for it. Furthermore, the Petitioner did not submit an Application for Alien Employment Certification (ETA 750) Part B (Statement of Qualifications of Alien) or an Application for Permanent Employment Certification (ETA 9089), as required. The numerous letters of recommendation submitted on her behalf did not describe the future work the Petitioner would undertake in her proposed endeavor, but rather focused on her past work and achievements. She provided little to no information concerning her possible future endeavors except a statement on the Form I-140 that her occupation is as "a medical doctor with advance degree" (capital letters removed).

The Director issued a request for evidence (RFE), providing the Petitioner an opportunity to submit additional evidence of her licensure as a medical doctor, evidence of her proposed employment to practice medicine, such as a contract or commitment letter, as well as evidence that the Petitioner will practice medicine in a designated underserved area. In her response, the Petitioner stated that, "I am not working as a medical [d]octor." She provided evidence that she accepted a new job researching and gathering evidence of COVID-19 cases among the inhabitants of a Texas border town. She also provided a new Form I-140 stating that her job would be as a [redacted] Epidemiologist employed by the [redacted] To evidence this employment, the Petitioner included an undated employment letter and an unsigned employment letter. The undated letter referenced a June 2020 start date as a contract employee, while the unsigned letter confirmed her start date as a permanent [redacted] Epidemiologist in [redacted] 2020. Finally, she submitted an ETA 750 Part B, which stated that she seeks work as a [redacted] Epidemiologist while also holding the very position she seeks. Her ETA 750 Part B included no reference to seeking work as a medical doctor.

The Director issued a second RFE, which noted the Petitioner's intention to work as a [redacted] Epidemiologist and requested additional evidence of how she and her endeavor met the eligibility

requirements under the Dhanasar framework. In her second RFE response, the Petitioner provided additional evidence concerning the location and nature of her [redacted] Epidemiologist position. According to the [redacted] Epidemiologist job posting she provided, a candidate would qualify for the position with a bachelor's degree, a master's degree, or experience in lieu of education. Although the Petitioner submitted additional evidence to argue that the location of her [redacted] Epidemiologist position would qualify as a designated underserved area, we need not address this issue because the Petitioner has not submitted sufficient evidence to establish that she is a physician licensed in the United States, nor would her work as a [redacted] Epidemiologist be considered practicing medicine.

Although the Director ultimately determined that the Petitioner qualified as a professional with an advanced degree, the Director's decision noted that the Petitioner changed her proposed employment from a medical doctor to a [redacted] Epidemiologist and that her new position began after the filing of the petition. Furthermore, the Director noted that the Petitioner provided evidence of her current employment as a [redacted] Epidemiologist but that she had not submitted sufficient evidence of her proposed endeavor or how it qualifies under the Dhanasar framework.

On appeal, the Petitioner submits additional evidence regarding how she meets the qualifications of an advance degree professional and as an individual of exceptional ability, as well as evidence of her employment as a [redacted] Epidemiologist. Although she provides articles on COVID-19 and other infectious diseases, as well as printouts of the public health concerns in the area where she works, this evidence pertains to her current job and does not set forth a plan for future work. She states on appeal that she researches and reports on infectious diseases, including COVID-19, as well as that she remains active in research at [redacted] University in California. Taken together, the Petitioner has indicated that her occupation is as a medical doctor, that she works as a [redacted] Epidemiologist, as well as that she will continue researching within academia while also performing [redacted] Epidemiologist work. Accordingly, the specific nature of her proposed endeavor remains unclear. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889.

We conclude that her initial filing and the RFE responses contained differing jobs and insufficiently detailed statements concerning her proposed future work. Furthermore, her appeal contains little attempt to address the Director's concern that she changed her employment from a medical doctor in her initial filing to a [redacted] Epidemiologist in response to the RFE, as well as that her new position as a [redacted] Epidemiologist began after the initial filing of the petition. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971). Additionally, the purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), and 103.2(b)(12). As the Director already noted in his decision, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The information provided by the Petitioner in the response to the Director's RFEs did not clarify or provide more specificity to an initially described proposed endeavor, but rather it changed the focus of her work and her employment altogether. As explained, the Petitioner's initial filing contained little to

no information on a proposed endeavor but simply included a statement that her occupation is as a medical doctor. Paradoxically, her first RFE response specifically stated that she is not working as a medical doctor but as a [redacted] Epidemiologist, a position that does not require a medical degree. Accordingly, the RFE response presented a new set of facts regarding the work she will perform, which is material to eligibility for a national interest waiver. See Matter of Michelin Tire Corp., 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also Dhanasar, 26 I&N Dec. at 889-90.

In determining whether an individual qualifies for a national interest waiver, we must rely on the specific proposed endeavor to determine whether (1) it has both substantial merit and national importance and (2) the foreign national is well positioned to advance it under the Dhanasar analysis. Because the Petitioner has not provided sufficient or consistent information regarding her proposed endeavor, we cannot conclude that she meets either the first or second prong, or that she has established eligibility for a national interest waiver.

III. CONCLUSION

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.