U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24062729

Date: JAN. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources 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, concluding that the record did not establish that the Petitioner qualified as a member of the professions holding an advanced degree. The matter is now before us on appeal. 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 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 8 C.F.R. § 204.5(k)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish 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[1], 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.

II. ANALYSIS

The Petitioner is a human resources specialist who proposes to establish a firm in the United States to provide human resources services to other U.S. companies. She holds a foreign degree that is the equivalent of a bachelor's degree in psychology.

The Director concluded in his decision that the Petitioner does not qualify for the EB-2 classification as a member of the professions holding an advanced degree because the evidence does not show that she has the required five years of progressive, post-degree experience in her specialty. Specifically, he noted that although a letter from one of her former employers (C-P-E-) verifies approximately three years and two months of experience as a human resources associates, two additional letters document her experience as an intern prior to receiving her degree. As the Petitioner did not establish her eligibility for the EB-2 classification, the Director declined to address whether she merited a national interest waiver.

On appeal, the Petitioner asserts that the Director erred in not requesting additional evidence of her post-baccalaureate work experience when he issued a request for evidence (RFE). We agree that per regulation and USCIS policy, when issuing the RFE the Director should have notified the Petitioner of all eligibility requirements that had not been established in the initial filing, thereby providing her with the opportunity to submit additional evidence addressing all of the deficiencies in the initial record. 8 C.F.R. § 103.2(b)(8)(iv); *see generally* 1 *USCIS Policy Manual* E.6(F)(3). The Petitioner now submits a new letter that she asserts shows additional qualifying work experience. The AAO will generally not accept evidence offered for the first time on appeal when a petitioner has been put on notice of a deficiency in the evidence, *see Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here we will review this new evidence since notice of the deficiency was not provided.

Evidence of qualifying experience must be in the form of letters from current or former employers which give a specific description of a petitioner's duties. Where this evidence is not available, other documentation will be considered. 8 C.F.R. § 204.5(g)(1). With her appeal the Petitioner submits a letter from Mr. d-S-C, who states that he is the CEO of a company which was a supplier of plastic goods to the Petitioner's former employer, C-, from 2012 to 2018, at which point C- ceased operations. He further writes that he worked and collaborated with the Petitioner from 2012 to 2016 in her role as the company's human resources director, and that they worked together to understand mutual contract obligations, product specifications, and closing orders, and to monitor deliveries and payments.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

We first note that this letter is not from the Petitioner's former employer, and as such it has reduced probative value. In addition, the duties described by Mr. d-S-C- do not conform with the those of a human resources specialist as described in the materials, or with the Petitioner's own description of her duties with C-. For example, the Petitioner submitted a copy of the O*Net Online report for this position, which provides a list of duties including interpreting and explaining human resources rules and policies, hiring employees, preparing employment records relating to leave, promotions and other events, and addressing employee concerns. Also, the Petitioner's resume lists her duties with C- simply as "plan, direct, or coordinate human resources activities and staff of an organization."

The Petitioner must resolve these 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). Rather than supporting the Petitioner's assertions of her employment with C- in a human resources role, the letter from Mr. d-S-C- indicates that, despite using the title of human resources director, the Petitioner's role with the company was comprised of duties unrelated to human resources functions. We therefore conclude that the Petitioner has not established that she has five years of post-baccalaureate experience in human resources, and is not eligible as a member of the professions holding an advanced degree.

III. CONCLUSION

The Petitioner has not established that she is eligible for the EB-2 classification as a member of the professions holding an advanced degree, and is therefore not eligible for a national interest waiver. While she asserts on appeal that she meets all three of the prongs under the *Dhanasar* analytical framework, we will reserve these issues.[2] The petition will remain denied.

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).