U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25672854

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 the record did not establish the Petitioner's eligibility for the underlying EB-2 classification or for a national interest waiver under the Dhanasar framework. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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[3], 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

A. Advanced Degree Professional

The Petitioner provided evidence that she completed a four-year foreign education in tourism (título de Bacharel em Turismo) in 2000; a four-year foreign education in law (título de Bacharel em Direito) in 2008; and a one-year graduate program in urban biology (Curso De Mestrado Profissional, título de Mestra em Biologica Urbana) in 2015.[4] The Petitioner also provided evidence that she completed several graduate courses on various topics such as business, education, and the environment.

On appeal, the Petitioner provides a Validential foreign academic equivalency evaluation, which states that the Petitioner earned the foreign equivalent of a U.S. graduate certificate in teaching higher education, a juris doctorate, and a master's degree in urban ecology. The Director did not have an opportunity to review this evaluation or determine what probative value, if any, it has in determining the U.S. equivalency of the Petitioner's foreign education. When reviewing this document, the Director may also wish to consult the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] 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).

[4] The Petitioner's diploma states that she completed her courses in urban biology in 2013; however, the university issued the diploma in 2015.

https://www.aacrao.org/edge. According to the database, the Petitioner's academic credentials may be the foreign equivalent of two separate U.S. bachelor's degrees and a U.S. master's degree.

As the Petitioner has provided evidence suggesting that she earned a master's degree, the Director may wish to reevaluate whether she has established that she qualifies as an advanced degree professional. Therefore, we remand this issue to the Director for further consideration.

B. Exceptional Ability Criteria

The Director determined the Petitioner had satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) pertaining to an "official academic record showing that the [foreign national] has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." However, the Director concluded that she had not established eligibility under any of the other criteria.

On appeal, the Petitioner presents evidence that she registered as a lawyer in Brazil and that to register as a lawyer, one must be admitted to the bar, among other requirements. The Director may wish to review this evidence for consideration of the Petitioner's eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(C), relating to a license or certification to practice the occupation. Also on appeal, the Petitioner asserts that the Director did not consider her eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), relating to evidence of membership in professional associations. The Petitioner presents evidence suggesting that she is a member of a bar association and requests consideration of her eligibility under this criterion. We remand this issue for review of the membership evidence and a consideration of her eligibility under this criterion.

The Director reviewed the Petitioner's recommendation letters and determined that she did not establish eligibility under criterion 8 C.F.R. § 204.5(k)(3)(ii)(F), relating to evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Specifically, the Director concluded, "[t]he evidence does not demonstrate that the [Petitioner] has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field." We agree. The authors of the letters express their high opinions of the Petitioner, state that she performed well in her past employment, and explain the importance of her services to the organizations and communities for whom she worked. However, none of the authors provide detailed explanations of how the Petitioner's work represents achievements and significant contributions to the industry or field, as opposed to the employers and the local community where she works.

While the Director may have considered other evidence under this criterion, the decision does not necessarily reflect such a consideration.[5] The Petitioner states the Director "failed to analyze the certificates of recognition for the services provided to two non-governmental entities ([redacted] and [redacted]) that honorably honored the Appellant for the legal services provided to the Manaus

[5] However, the Petitioner should note that when USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993).

community in Brazil." While the certificates of recognition demonstrate the organizations' appreciation of the Petitioner's volunteerism, they do not show how this appreciation represents recognition for achievements and significant contributions to the industry or field, as opposed to recognition for services provided to a specific community or organization. Therefore, even if the Director considered this evidence, it would not necessarily establish her eligibility under this criterion.

The Petitioner also provides evidence that she participated in conferences and authored articles on topics including the legality of government restrictions due to COVID-19, domestic violence rates, and environmental crimes in the Amazon region. However, the Petitioner did not provide a detailed explanation of the relevance this evidence has to her eligibility for the EB-2 classification or for a national interest waiver. For example, she provides little information about the impact these conferences and articles had to the field of endeavor, nor does she suggest that peers, governmental entities, or professional or business organizations recognized her for achievements and significant contributions to the industry or field as a result of these articles and conferences. Nevertheless, the Director did not have the opportunity to review this evidence and therefore we remand this issue for the Director's consideration.

We reviewed the Petitioner's employment and experience letters to determine whether she has at has at least ten years of full-time experience in the occupation under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Although the Petitioner provided a letter from the municipal council stating that she began working as an executive secretary in 2013, the letter does not provide a clear end date for this employment position. In addition, the Petitioner has not explained how the duties of an executive secretary constitute experience as a law professor. The employment letter from [redacted] University states that the Petitioner worked from March 9, 2000, to February 23, 2010, which evidences that she worked for this university for almost ten years, most of which occurred prior to her education in law. However, evidence in the record, such as the advisory opinion from international education consultants, [redacted], states that the Petitioner worked part-time at [redacted] University.

Other employer letters do not sufficiently demonstrate that the Petitioner has at least ten years of full-time experience in the occupation. For instance, the Court of Justice of the [redacted] letter indicates that while pursuing her education in law, she worked four hours per week for one year as a conciliator.[6] The Higher Baptist School of the [redacted] letter evidences that the Petitioner worked as a professor from August 5, 2019, to the date of the letter (February 15, 2021), but does not state whether the Petitioner worked full-time or part-time. Other evidence in the record, including the advisory opinion and the Petitioner's Form ETA 750 Part B, states that the Petitioner worked part-time in this position.

Accordingly, the letters do not sufficiently demonstrate the Petitioner has (1) at least ten years of full-time experience and (2) that her experience is in the occupation. In addition, many of the letters do not comply with the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B). Therefore, we agree with the Director's conclusion that the Petitioner has not established eligibility under this criterion.

C. Substantial Merit and National Importance

[6] In addition, the Petitioner has not explained how working as a conciliator constitutes experience as a law professor.

The Petitioner initially proposed to teach and guide future legal practitioners as a law and environmental sustainability professor. Although a petitioner does not need a job offer from a specific employer to establish eligibility for a national interest waiver, USCIS considers the context in which a petitioner proposes to work, as it provides insight into the impact the proposed endeavor may have. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Dhanasar, 26 I&N Dec. at 889. Here, the record does not demonstrate the context in which the Petitioner proposes to work as a law professor. For example, the Petitioner did not specify whether she plans to work at a specific university, several universities, a vocational school, a community college, or as a private tutor.

On appeal, the Petitioner proposes to:

- Create a school program to provide education in human rights and international law;
- Engage and capture funding from the United Nations, UNESCO, BID, BM, and CAF;
- Engage a community of scholars and business schools within the United States and worldwide to train people and promote peace, justice, and human rights; and
- Support and advise organizations that intend to strengthen their support of human rights.

The endeavor on appeal differs from the initially described proposed endeavor. Specifically, the Petitioner first proposed to work as a law professor and now proposes to create a school program, fundraise, and advise organizations. Although the Petitioner may still educate and train, the proposed endeavor, as described on appeal, appears to focus on additional activities beyond teaching.

If the Director determines the Petitioner qualifies for the EB-2 classification, the Director may wish to evaluate what effect the additional proposed endeavor activities have on her eligibility for a national interest waiver. A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). 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 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.

Here, the Petitioner adds new activities to her proposed endeavor, which the Director did not have the opportunity to consider. In determining whether an individual qualifies for a national interest waiver, USCIS must rely on the specific proposed endeavor to determine whether it has both substantial merit and national importance. As the Petitioner has not specified the context in which she proposes to work as a law professor and has added new activities outside the realm of teaching, the Director may wish to consider whether the Petitioner has materially changed her proposed endeavor.

III. CONCLUSION

We remand the matter for the Director to consider the evidence the Petitioner provides on appeal and to reevaluate the threshold issue of whether the Petitioner established eligibility for the EB-2 classification. If the Director determines the Petitioner is eligible for the classification, the Director

may consider whether the Petitioner is eligible for a national interest waiver under the Dhanasar analytical framework. When considering the Petitioner's eligibility under the first Dhanasar prong, the Director may wish to determine whether the Petitioner articulated a consistent proposed endeavor and whether the record supports a finding that her endeavor has substantial merit and national importance. The Director may request any additional evidence considered pertinent to these new determinations and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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