U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29583480

Date: JAN. 5, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology (IT) analyst/entrepreneur, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse a job-offer in this category - and thus a related requirement for certification from the U.S. Department of Labor (DOL) - if a petitioner demonstrates that waiving these U.S.-worker protections would be "in the national interest."

The Director of the Nebraska Service Center denied the petition. The Director found the Petitioner qualified for the requested EB-2 category. But the Director concluded that the Petitioner did not demonstrate the requested waiver's merits. On appeal, the Petitioner contends that the Director undervalued evidence of her positioning to advance her proposed endeavor and a waiver's benefits to the United States.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we affirm the Director's finding that the Petitioner has not demonstrated her positioning to advance her proposed endeavor. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the requested EB-2 immigrant visa category, either as members of the professions holding "advanced degrees" or noncitizens of "exceptional ability" in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this category usually requires prospective employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). To avoid the job offer/labor certification requirements, petitioners must demonstrate that waivers of the U.S.-worker protections would be in the national interest. Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. *See Matter of Dhanasar,* 26 I&N Dec. 884, 889-91 (AAO 2016). If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may merit waivers of the job-offer/labor certification requirements if they establish that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Id.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Brazilian native and citizen, worked in the IT field for various companies in her home country for more than eight years, from 2013 to 2022. During that time, she completed one university course in financial technology management in 2014 and another in project management and organizational processes in 2017. Also, in 2021, she received a post-graduate certificate in "*Lato Sensu* MBA Excellence in Project Management and Organizational Processes."[1]

The Petitioner came to the United States in 2022 and intends to establish a company here offering technical education and training in the IT field. Her business plan states that the company would also provide IT consulting services and "mapping of the professional profile of human capital." The business plan projects that, within five years of operation, the company would employ 36 people and generate revenues of more than $3.9 million.

B. Eligibility for the EB-2 Category

The Director erred in finding the Petitioner eligible for EB-2 classification as an advanced degree professional. First, as the Petitioner stated in her response to the Director's request for additional evidence (RFE), she seeks EB-2 eligibility only as a noncitizen of exceptional ability. *See* section 203(b)(2)(A) of the Act (allowing petitioners to qualify for the EB-2 category either as advanced degree professionals or noncitizens of exceptional ability). Thus, the Director need not have considered her qualifications as an advanced degree professional.

Moreover, the Director erroneously cited evidence that the Petitioner has an advanced degree. The Director found her *lato sensu* certificate equivalent to a U.S. master's degree. *See* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" to include "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate"). The Petitioner did not submit any evidence of the certificate's equivalence to a U.S. master's degree. But the Director found that the Electronic Database for Global Education (EDGE) - an online resource that U.S. federal

[1] The Latin phrase "*lato sensu*" means "in the broad sense." *See, e.g.*, Oxford Reference, www.oxfordreference.com/display/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1192.

courts have described as a reliable source of foreign educational equivalencies - shows that the Petitioner's certificate "appears" to equate to a U.S. master's degree.[2]

Contrary to the Director's finding, however, EDGE does not equate a Brazilian *lato sensu* certificate to a U.S. master's degree. Rather, EDGE states that *mestrado profissional* and *titulo de mestre* degrees from Brazil equate to U.S. master's degrees. EDGE indicates that a *lato sensu* certificate constitutes recognition of professional development and specialization but is not a professional or academic degree. In describing Brazil's educational system, the database states: "Professional development and specialization programs are considered *lato sensus* (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees." Thus, the record lacks evidence that the Petitioner's *lato sensu* certificate equates to a U.S. master's degree or even constitutes a "degree" as the regulations require. *See, e.g.,* 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree" as "any United States academic or professional *degree* or a foreign equivalent *degree* above that of baccalaureate") (emphasis added).

The record does not support the Petitioner's qualifications for EB-2 classification as an advanced degree professional. We will therefore withdraw the Director's contrary finding.

The Petitioner could still qualify for the EB-2 category as a noncitizen of exceptional ability. *See* section 203(b)(2)(A) of the Act. But, to avoid deciding the matter in the first instance and because we can resolve this appeal on another issue, we will not reach and hereby reserve consideration of the Petitioner's EB-2 eligibility as a noncitizen of exceptional ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal in removal proceedings where an applicant did not otherwise qualify for relief).

C. Positioning to Advance the Proposed Endeavor

The record supports the Director's conclusions that the Petitioner met the first prong of the *Dhanasar* framework by demonstrating that her proposed endeavor has substantial merit and national importance. Thus, we will next review the Director's finding that she did not meet *Dhanasar*'s second prong: demonstrating her positioning to advance her proposed venture.

To determine whether a petitioner is well positioned to advance their proposed endeavor, USCIS focuses on the petitioner and considers multiple factors, including:

- their education, skills, knowledge, and record of success in related or similar efforts;
- the existence of a model or plan for future activities;
- progress towards achieving the proposed endeavor; and
- interest or support in the endeavor by potential customers, users, investors, or others.

[2] EDGE was created by the American Association of Collegiate Registrars and Admission Officers (AACRAO), a non-profit association of more than 11,000 higher education professionals representing about 2,600 institutions in more than 40 countries. *See* AACRAO, "Who We Are," www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

Matter of Dhanasar, 26 I&N Dec. at 890. A petitioner need not demonstrate that their venture would more likely than not succeed. *Id.* But they must establish their positioning to advance their endeavor. *Id.*

The Director acknowledged the Petitioner's academic certificates and "record of success in the IT field." But the Director found that she did not sufficiently demonstrate "how [she] will continue to advance [her] proposed endeavor as an entrepreneur." Noting that the Petitioner's business plan calls for an initial investment of $180,000, the Director found insufficient evidence of the required funds' availability. The Director also found that the Petitioner did not demonstrate interest in her proposed endeavor from potential customers or investors.

In response to the Director's concerns about the interest level in her proposed endeavor, the Petitioner notes that "she has already filed and registered the necessary company documents towards establishing a business." She states: "[I]t is crucial to understand that building significant interest and securing contracts often requires time, networking, and the establishment of a track record, which can be achieved as the [Petitioner's] business progresses."

The Petitioner documented that, in March 2023, she established a corporation in the United States. As the Director's decision notes, however, a petitioner must demonstrate eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). The Petitioner filed this petition in August 2022. Thus, her company's formation in March 2023 does not demonstrate her positioning to advance the endeavor at the time of the petition's filing.

Regarding the $180,000 initial investment, the Petitioner submitted evidence suggesting that she, her spouse, or both own real estate properties in Brazil valued at more than 1,327,500 reals, or about $270,000.[3] The July 2022 property appraisal reports state their preparation at the request of the Petitioner's spouse. But the record does not document or specify the properties' owner(s). Also, the properties may not be immediately convertible to cash. *See, e.g.*, Corp. Finance Inst., "Non-Current Assets," https://corporatefinanceinstitute.com/resources/accounting/non-current-assets (listing property as a non-current asset that will not be converted to cash within one year). Thus, the appraisal reports do not demonstrate the current availability of the initial investment funds. The Petitioner has neither documented the availability of the required funds nor explained how she would obtain them.

Also, the Director's RFE gave the Petitioner an opportunity to submit proof of her positioning to advance her proposed endeavor. But she has not provided evidence of interest in her venture from customers, investors, or others. Further, because the Petitioner has not demonstrated that she has the foreign equivalent of a U.S. master's degree, she may not be as educationally qualified to advance the proposed venture as the Director initially found.

Considering the totality of the circumstances, a preponderance of the evidence does not establish that the Petitioner is well positioned to advance her proposed endeavor. We will therefore affirm the petition's denial.

[3] We based the U.S.-dollar estimate on information at Currency Converter, Foreign Exchange Rates, www.oanda.com/currency-converter/en.

D. Benefits of a Waiver

Our conclusion that the Petitioner has not demonstrated her positioning to advance her proposed endeavor resolves this appeal. Thus, similar to the determination regarding her potential EB-2 eligibility as a noncitizen of exceptional ability, we hereby also reserve consideration of her appellate arguments regarding a waiver's purported benefits to the United States. *See Bagamasbad*, 429 U.S. at 25; *Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not demonstrated that she is well positioned to advance her proposed endeavor. As she has not established the merits of a national interest waiver, we will affirm the petition's denial for lack of a required job offer and labor certification.

ORDER: The appeal is dismissed.