U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29227059

Date: JAN. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, 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's endeavor would have substantial merit or national importance, that she is well-positioned to advance the proposed endeavor, or that, on balance, it would benefit the United States to waive the job offer requirement in the exercise of discretion. The Petitioner appealed the decision. Upon review, we concluded that the record did not establish the Petitioner's eligibility for the underlying EB-2 visa classification. Since this issue had not been fully addressed by the Director, we remanded the case for the issuance of a new decision. The Director then denied the petition a second time, finding that the record did not establish that the Petitioner qualifies for the EB-2 visa classification or a national interest waiver. The matter is before us again 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.

A. 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. If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 (AAO 2016) provides the framework for adjudicating national interest petitions. *Dhanasar*

states that U.S. Citizenship and Immigration Services (USCIS) may, as a 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

A. Petitioner's Educational Credentials

The first issue on appeal is whether the Petitioner qualifies for the EB-2 classification as an advanced degree professional.[2] The term "advanced degree" is defined at 8 C.F.R. § 204.5(k)(2) as follows:

> *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 . . .

The regulations at 8 C.F.R. § 204.5(k)(3)(i)(A)-(B) state that a petition for an advanced degree professional must be accompanied by either an official academic record showing that the noncitizen has a U.S. advanced degree or a foreign equivalent degree, or by an official academic record showing that the noncitizen has a U.S. baccalaureate degree or a foreign equivalent degree, accompanied by employer letters demonstrating the five required years of progressive experience in the specialty.

The Petitioner provided diplomas, academic transcripts, and an equivalency evaluation regarding the following educational credentials:

- Degree in fashion from [redacted] (2001-2004); and
- Certificate from [redacted] (2006-2007).

According to the education and experience evaluation written by A-W-, the Petitioner's fashion degree is equivalent to a U.S. baccalaureate degree and her teaching certificate is equivalent to a U.S. master's degree. A-W- further states that the combination of the Petitioner's education and work experience is equivalent to a U.S. master's degree in business administration. In denying the case, the Director concluded that the Petitioner did not have a baccalaureate degree in her field of business management and did not submit evidence documenting five years of progressive post-baccalaureate experience in her specialty of business management, and so does not qualify as an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i)(B).[3]

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

[2] The Petitioner initially claimed that she also qualifies for the EB-2 visa as an individual of exceptional ability in business. However, she does not mention this claim on appeal, and we therefore consider the issue waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[3] The Director's denial also states that the Beneficiary does not qualify as an advanced degree professional because she

On appeal, the Petitioner states that the Director "completely disregarded" the academic evaluation from A-W-,[4] and that this evaluation, along with her employment verification letters, establishes her claimed work experience. According to the appellate brief, the Petitioner qualifies as an advanced degree professional because she "has attained the equivalent of an advanced degree in design," has "an Advanced Degree in Education Applied to Arts from [redacted]" and has a commercial real estate license and certification as a professional food manager and personal stylist.

First, we note that only official academic records and employment verification letters can establish a noncitizen's eligibility for the advanced degree classification. 8 C.F.R. § 204.5(k)(3)(i)(A)-(B). The Petitioner's various licenses, while relevant to the national interest waiver portion of her petition, are not applicable to her eligibility for classification as an advanced degree professional.[5] Second, while we may use expert opinion letters submitted by the Petitioner as advisory testimony, we are responsible for making the final determination regarding eligibility for the benefit sought. Therefore, where an opinion letter is not in accord with other information in the record or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). In this instance, A-W-'s letter is not in accord with the Petitioner's educational records.

First, as noted in our prior remand decision, A-W- states that the Petitioner's teaching course certificate is a Brazilian "Master's Degree in Education." According to the Electronic Database for Global Education (EDGE),[6] an online resource regarding foreign educational equivalencies, Brazilian master's-level credentials are titled "Mestrado Profissional," "Título de Mestre," "Grau de Mestre," or "Diploma de Mestrado." These titles do not appear on the Petitioner's diploma or transcript from [redacted] and there is no other indication that she completed a Brazilian master's degree program.

Where there are discrepancies in the evidence, it is the Petitioner's burden to resolve these discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not addressed the concerns we previously

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does not have a degree in her field of management. However, the regulations at 8 C.F.R. § 204.5(k)(1)-(3) do not indicate that the noncitizen's qualifying degree has to be in their field.

[4] Upon review, we agree that the Director's decision only mentioned the academic evaluation in passing and did not fully address its claims. However, our prior remand decision reviewed the evaluation and its deficiencies and explained why we would not grant it evidentiary weight. The Petitioner had notice of deficiencies in the academic evaluation but did not supplement the record or address the concerns explained in our prior decision, which we reiterate and elaborate upon below. Therefore, examining the contents of the evaluation would not lead to a different result. The Director's alleged error is, at most, harmless, and in the interests of efficiency we will not remand this case a second time. *See generally Matter of O-R-E-*, 28 I&N Dec. at, 350 n.5 (citing *Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) (stating that error is harmless where there is no "reason to believe that . . . remand might lead to a different result" (citation omitted))).

[5] We further note that the Petitioner's real estate sales associate license has been null and void since 2019, well before this appeal was filed in 2023. Fla. Dep't. of Bus. & Prof'l Regulation, *Licensing Portal – License Search*, https://www.myfloridalicense.com/wl11.asp?mode=0&SID= (last visited Dec. 15, 2023, and incorporated into the record). The Petitioner did not explain the relevance of this or her other licenses to her field of business management.

[6] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. *See* AACRAO, *Who We Are*, https://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").

pointed out regarding A-W-'s evaluation. Therefore, as before, we will not grant the evaluation any evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

Additionally, beyond the prior decisions in this case, we note that there are concerns regarding the Petitioner's baccalaureate records. According to EDGE, a Brazilian Título de Bacharel degree is awarded after three to five years of study. While a three-year degree is only equivalent to three years of university study in the United States, a four- or five-year degree represents a level of education comparable to a U.S. baccalaureate.[7] Here, the Petitioner's baccalaureate degree transcript is for a program of study that lasted from 2001 to 2004. However, the transcript also indicates that she did not take any courses in the first semester of 2002, and furthermore does not state any grades for the classes taken from 2001 to 2002. While the Petitioner's graded classes from 2003 and 2004 have a status of "APR," or "aprovado," the classes with no grades have a status of "DISP," or dispensado. According to EDGE, in a Brazilian educational document, "aprovado" means "passed," while "dispensado" means "waived, exempt."[8] There is no indication in the transcript or the rest of the petition record as to why the Petitioner was exempt from three semesters of classes or whether her course of study actually lasted four years. The evaluation does not mention this issue, simply listing courses the Petitioner took and stating that she completed a four-year course of study that was the equivalent of a U.S. bachelor's degree. For this additional reason, A-W-'s evaluation is not in accordance with the evidence of record, and we will not accept its conclusions. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

As explained above, the Petitioner has not submitted an official academic record showing that she has a foreign degree which is equivalent to a U.S. advanced degree. 8 C.F.R. § 204.5(k)(3)(i)(A). Furthermore, the Petitioner's baccalaureate degree transcript and supporting materials provide no explanation for why she only received grades for two years of a four-year course of study, which raises doubts as to whether she has a foreign degree which is equivalent to a U.S. baccalaureate degree. Because the Petitioner did not receive prior notice of the concerns regarding her baccalaureate degree records, we discuss this issue so that the Petitioner can address these concerns in future filings in this matter. 8 C.F.R. § 103.2(b)(16)(i). We note, however, regardless of whether the Petitioner has a qualifying baccalaureate degree, she did not submit evidence establishing that she has the five years of progressive post-baccalaureate work experience in her specialty required to show EB-2 eligibility under 8 C.F.R. § 204.5(k)(3)(i)(B).

B. Petitioner's Work Experience

According to 8 C.F.R. § 204.5(g)(1), evidence regarding qualifying work experience should be in the form of letters from current or former employers which include the name, address, and title of the writer, as well as a specific description of the Petitioner's duties. If such evidence is unavailable, other documentation relating to the qualifying work experience will be considered. In her initial U.S. Department of Labor, Form ETA-750, Application for Alien Employment Certification, the Petitioner stated she had the following qualifying full-time work experience:

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[7] AACRAO, Título de Bacharel/Grau de Bacharel (Title of Bachelor), https://www.aacrao.org/edge/country/credentials/credential/brazil/título-de-bacharel-grau-de-bacharel-(title-of-bachelor) (last visited Dec. 15, 2023, and incorporated into the record).

[8] AACRAO, *Brazil Grading Scales*, https://www.aacrao.org/edge/country/grading/brazil (last visited Dec. 15, 2023, and incorporated into the record).

- Purchasing and Merchandising Manager, [redacted] (March 2017 to present); and
- Creative General Manager, [redacted] (January 2009 to March 2017).

In her October 2019 response to the Director's first request for evidence, the Petitioner submitted a second Form ETA-750 stating the following work experience:

- Travel Retail Purchasing and Merchandising Manager, [redacted] (November 2017 to present);
- Travel Retail Purchaser, [redacted] (March 2017 to November 2017); and
- Creative General Manager, [redacted] (January 2009 to August 2016).[9]

To establish her work experience, the Petitioner provided a letter from an accountant, J-C-P-B-, stating that the Petitioner was employed by [redacted] as a general manager from August 2009 to August 2017, and that she worked "offsite" from July 2015 to August 2016. The letter is not from [redacted] and does not state the Petitioner's duties and so does not meet the requirements at 8 C.F.R. § 204.5(g)(1).

We further note that despite the Petitioner describing her position at [redacted] as being in event planning and decoration, the letter states that [redacted] is the "commercial name of the engineering and construction company [redacted]." Where there are inconsistencies in the evidence, it is the Petitioner's burden to resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The record does not contain independent, reliable evidence establishing the nature of [redacted] business or the Petitioner's duties there. While this issue was not mentioned by the Director, the Petitioner should be prepared to address it in any future filings in this matter.

The October 11, 2019 letter from [redacted] states that the Petitioner began working there in March 21, 2017, includes the required information about its writer, and describes the Petitioner's duties as a travel retail purchasing and merchandising manager, but does not detail her initial position as a travel retail purchaser. It is therefore not apparent that the purchaser position the Petitioner held from March to November 2017 was in the field of business management. A second letter from [redacted], dated September 2019, states that the Petitioner was initially hired as a "purchasing manager" and was promoted in April 2018; this appears to refer to a second promotion that was not mentioned in the Forms ETA-750. Because eligibility must be demonstrated as of the time of filing, the Petitioner may only qualify based on work experience she acquired prior to the petition filing date of March 16, 2018. If the purchaser position was in the Petitioner's field, these materials therefore relate to just under one year of relevant work experience.

The Petitioner also submitted letters regarding two positions that she did not include in her Forms ETA-750. First, we note that Form ETA-750, which the Petitioner signed under penalty of perjury, instructs the preparer to "list any other jobs related to the occupation for which the alien is seeking

[9] While not addressed by the Director in the second denial, we note that the Petitioner has not explained the differing end dates she gives for her time working at [redacted]. She also does not address why her initial ETA-750 states that she was employed as a purchasing manager for her entire time at [redacted], while the second one indicates that she was hired as a purchaser and later promoted to purchasing manager. *Matter of Ho*, 19 I&N Dec. at 591-92.

certification . . .".[10] Despite having two opportunities to do so, the Petitioner did not document these two positions as qualifying experience in her Forms ETA-750. The record does not contain evidence which resolves this discrepancy. *Matter of Ho,* 19 I&N Dec. at 591-92. Furthermore, for the reasons below, the provided letters do not meet the requirements at 8 C.F.R. § 204.5(g)(1) and so do not establish the Petitioner's qualifying work experience.

The letters from C-F- state that the Petitioner "taught summer fashion courses" at [redacted]. However, the Petitioner's field is business administration, not teaching, and so these letters do not document relevant work experience. *Id.*

The letters from A-L- state that the Petitioner was a "service provider" at [redacted], a Brazilian educational organization, from 2005 to 2009. A-L- gives her title as "independent consultant," and while she states that she managed the Petitioner at [redacted], there is no indication that A-L- wrote the letter on behalf of the employing entity, such as an organizational letterhead. The regulation at 8 C.F.R. § 204.5(g)(1) requires experience letters to be from the relevant employers unless the Petitioner establishes that such evidence is unavailable. A-L-'s letter does not meet this requirement. *Id.* Furthermore, A-L- states that the Petitioner was a fashion instructor, which is not work experience in the field of business administration. While A-L- states that the Petitioner eventually "became a member of [redacted] corporate consulting team," she does not state when this happened, and it is not apparent how the Petitioner's time was divided between qualifying business management duties and her non-qualifying duties as a classroom teacher. We therefore cannot conclude that this letter documents the Petitioner's work experience in her specialty of business administration.

The Petitioner has only provided employment letters documenting, at most, just under a year of post-baccalaureate work experience in her specialty. She therefore does not qualify as an advanced degree professional through a combination of a baccalaureate degree and five years of post-baccalaureate work experience. 8 C.F.R. § 204.5(k)(2)(i)(B). Furthermore, as explained above, she has not provided an official academic record showing that she has a qualifying advanced degree. 8 C.F.R. § 204.5(k)(2)(i)(A). Therefore, she is not eligible for the EB-2 classification as an advanced degree professional. 8 C.F.R. § 204.5(k)(2).

III. CONCLUSION

Because the Petitioner's ineligibility for the EB-2 classification is dispositive of the case, we need not reach the issue of whether she qualifies for a waiver of the job offer requirement in the exercise of discretion and hereby reserve it. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The petition will remain denied.

[10] *See also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations requiring that form's submission).

ORDER: The appeal is dismissed.