U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29337606

Date: JAN. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a software quality analyst and tester, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the EB-2 classification as an individual of exceptional ability, or that he merits a national interest waiver as a matter of discretion. 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.

"Advanced degree" is defined, in pertinent part, as 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. 8 C.F.R. § 204.5(k)(2).

"Profession" is defined as 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 into the occupation. 8 C.F.R. § 204.5(k)(2).

"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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, 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.

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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. EB-2 Classification

1. Individual of Exceptional Ability

In denying the petition, the Director determined that as the Petitioner met only two of the requisite three criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), he did not establish his eligibility for the EB-2 classification as an individual of exceptional ability. On appeal, the Petitioner does not contest the Director's conclusion that he did not qualify as an individual of exceptional ability. Therefore, we consider this issue waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012), (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

2. Advanced Degree Professional

We note that while the Director's decision analyzed the Petitioner's qualifications as an individual of exceptional ability, the decision did not provide an analysis of his qualifications as an advanced degree

[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).

professional. The Petitioner initially submitted his diploma and transcript from [redacted] [redacted] in Brazil. Through a request for evidence (RFE), the Director pointed to the fact that the Petitioner obtained a three-year degree and determined that the degree did not qualify as the foreign equivalent of a U.S. bachelor's degree. In response the RFE, the Petitioner submitted a credential evaluation that equates a combination of his education and experience to a U.S bachelor of science degree in information technology. We conclude the Director erred in not addressing this evidence through an analysis of the Petitioner's qualifications as an advanced degree professional in the denial, so we will address it here.

On appeal, the Petitioner reasserts that he qualifies as an advanced degree professional and resubmits the credential evaluation for our consideration. We note that the Petitioner's transcript from [redacted] [redacted] in Brazil shows that he completed six semesters of coursework to receive a three-year degree. The record, however, does not include sufficient evidence to establish that this degree is the equivalent of a U.S. bachelor's degree. The credential evaluation argues that the Petitioner's years of work experience are equivalent to a U.S. bachelor's degree under a "3-for-1 Rule," a method of assessment that does not apply to immigrant petitions; it is a provision reserved for certain nonimmigrant petitions. The regulation at 8 C.F.R. § 204.5(k)(2) does not provide for a substitution of training or experience to be considered as the equivalent of a bachelor's degree; both section 203(b)(2)(A) of the Act and the regulation contemplate only a single degree, not a combination of education and experience claimed as the equivalent, in aggregate, of a degree. We also note that, while the evaluation describes the Petitioner's academic and work experience, it does not otherwise explain how the Petitioner's coursework and work experience in Brazil equate to the receipt of a U.S. bachelor's degree. Credential evaluations are reviewed for advisory purposes only; if questionable in any way, USCIS may give them less weight. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r) 1988). Because the credibility of the credential evaluation is in question, we conclude that it holds little probative value in this matter. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

While not referenced in his brief, we note the Petitioner submitted a certificate for his completion of a two-year post-graduation course offered by [redacted] in response to the RFE, and material included with the brief references this credential. The record, however, does not include supporting evidence to demonstrate that this credential is the foreign equivalent of an advanced degree earned in the United States. The Petitioner has not met his burden of proof to establish that he qualifies as an advanced degree professional by virtue of possessing the foreign equivalent of a U.S. advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(A).

The Petitioner has not demonstrated that he has attained the foreign equivalent of a U.S. bachelor's degree or advanced degree. Therefore, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(A) of the Act and 8 C.F.R. § 204.5(k)(2). Furthermore, as he does not hold at least a U.S. bachelor's degree or its foreign equivalent, the Petitioner has not demonstrated that he has at least five years of progressive *post-baccalaureate* experience consistent with 8 C.F.R. § 204.5(k)(2). Therefore, the Petitioner does not qualify for the EB-2 classification as an advanced degree professional.

B. National Interest Waiver

As explained in the legal framework above, 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. Because the Petitioner has not established this threshold issue, the remainder of the Petitioner's arguments need not be addressed. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, as a matter of discretion, we decline to reach whether he meets the three-prong *Dhanasar* framework. *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 an applicant is otherwise ineligible).

Nonetheless, we note that with his appeal, the Petitioner initially submitted a statement saying that he would submit new evidence to establish his eligibility for a national interest waiver. Specifically, the Petitioner stated the following (quoted as written):

> We will be sending more documents and new evidence in regards to the three-prong evaluation within Dhanasar framework to show that I am a good candidate and hopefully be granted approval of our petition.

Later, the Petitioner submits a brief in which he describes his qualifications for a national interest waiver under the *Dhanasar* adjudicative framework. The brief is supplemented not by new evidence to establish his eligibility for a national interest waiver, but by the following material previously submitted: a summary of his academic and work experience, a definitive statement describing his endeavor, a portion of an expert opinion letter, and a credential evaluation. In his brief, the Petitioner reiterates previous assertions of his qualifications for a national interest waiver that the Director considered in denying the petition.

Neither the brief nor the supporting evidence specifically identifies a basis for the Petitioner's appeal of the Director's decision with regard to his national interest waiver request. Importantly, the Petitioner does not address the specific findings in the Director's denial, nor does his brief claim any erroneous conclusion of law or statement of fact in the Director's decision. 8 C.F.R. § 103.3(a)(1)(v). Based on the record as it is presently constituted, as a matter of discretion, we agree with the Director's ultimate conclusion that the Petitioner does not merit a national interest waiver.

III. CONCLUSION

The Petitioner has not established that he meets the requirements of EB-2 classification. The petition will remain denied.

ORDER: The appeal is dismissed.