U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22755884

Date: NOV. 18, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a math teacher, seeks second preference 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 EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska initially granted the petition; however, after issuing a notice of intent to revoke (NOIR)[1] and providing the Petitioner an opportunity to respond, the Director revoked the approval of the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree. The Director further concluded that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

[1] After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record and substantial evidence, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). A NOIR is properly issued if there is "good and sufficient cause" and the notice includes a specific statement of the facts underlying the proposed action and the supporting evidence. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Per *Matter of Estime*, "[i]n determining what is 'good and sufficient cause' for the issuance of a [NOIR], we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." *Id.*

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

As noted above, the Director initially granted the petition; however, the Director then sent the Petitioner a NOIR, explaining that the Director intended to revoke the approval of the petition because the record did not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2). Specifically, although the record contains a copy of a diploma that indicates "field/specialty: taxation," awarded to the Petitioner by [redacted] University, Russia, and its English translation, in the NOIR the Director informed the Petitioner that, without more, the diploma "is insufficient to qualify as an advanced degree." The Director further explained that, in the alternative, the record does not satisfy at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), required for second-preference classification as an individual of exceptional ability.

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

In the notice of revocation, the Director specified that the American Association of Collegiate Registrars and Admissions Officers' (AACRAO) Electronic Database for Global Education (EDGE) indicates that the Petitioner's diploma from [redacted] University is equivalent to a U.S. bachelor's degree. The Director further noted that the record does not establish that the Petitioner has at least five years of post-baccalaureate experience in the specialty as a math teacher. Therefore, the Director concluded that the record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2) (defining an advanced degree, in relevant part, as a "United States baccalaureate or a foreign equivalent followed by at least five years of progressive experience in the specialty").

On appeal, the Petitioner asserts that she responded to the NOIR with an academic evaluation "by Evaluation Services Inc, a member AACRAO and EDGE approved evaluation agency along with explanation [*sic*] that according to [AACRAO EDGE] the Diploma of Specialist ('*Diplom Specialista*') represents attainment of a level of education comparable to a master's degree in the United States." The Petitioner also resubmits the academic evaluation, along with a screenshot from the AACRAO EDGE website, stating the following:

> Credential Advice
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> The *Diplom spetsialista* in architecture, law, or medicine (6 years) represents attainment of a level of education comparable to a first professional degree in architecture, law, or medicine in the United States. The *Diplom spetsialista* in other fields (5 years) represents attainment of a level of education comparable to a master's degree in the United States.

In turn, the academic evaluation opines, in relevant part, that the Petitioner's "*Diplom* (Diploma) . . . is, in level and intent, the academic equivalent of a bachelor's degree and a master's degree in economics, with specialization in taxes and taxation, from a regionally accredited institution in the United States." However, the evaluation does not identify the Petitioner's degree as a *Diplom Spetsialista*, corresponding to the AACRAO EDGE credential advice excerpt.

We acknowledge that AACRAO EDGE informs that a five-year *Diplom spetsialista* in a field other than architecture, law, or medicine, represents attainment of a level of education comparable to a U.S. master's degree. However, the English translation of the Petitioner's five-year diploma does not indicate that it is a *Diplom spetsialista*. Specifically, the diploma translation begins by stating, "translated from Russian: Diploma of *undergraduate* education" (emphasis added). The diploma translation further states that "[t]he present Diploma is issued to [the Petitioner] to the effect that he [*sic*] successfully completed the course of *undergraduate* education" (emphasis added). The translation does not indicate that it is for the completion of concurrent or other graduate coursework. Moreover, the English translation of the diploma does not use the phrase "*Diplom spetsialista*," "*Diploma specialista*," or any similar translation to indicate that it is a type of degree determined by

AACRAO EDGE to be equivalent to a U.S. master's degree.[3] Likewise, the academic evaluation referred to the Petitioner's degree as a *Diplom*, not a *Diplom spetsialista* or any similar translation.

The record also contains a copy of an academic transcript written in a language other than English, and a certified English translation of it. However, the translation of the transcript does not identify the student to whom it corresponds; it does not list the courses by semester or year; and it does not otherwise indicate that a particular degree program was completed at any specific period of time. Thus, the transcript is not credible or probative evidence of the Petitioner's education. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Notably, it does not indicate that the Petitioner received a *Diplom spetsialista* in 2009, following at least five years of education.

Because the English translation of the Petitioner's diploma in the record specifically identifies that it is for the completion of undergraduate coursework and the diploma translation does not indicate that the Beneficiary received a *Diplom spetsialista*, the academic evaluator's discussion of types of diplomas other than the Petitioner's diploma that may be equivalent to a U.S. master's degree is misplaced. Furthermore, the record supports the Director's conclusion that the record does not establish the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2). Specifically, even if the Petitioner had established that her degree is the foreign equivalent of a U.S. bachelor's degree, the Petitioner does not assert, and the record does not support the conclusion, that she has at least five years of progressive experience in the specialty of teaching mathematics. *See* 8 C.F.R. § 204.5(k)(2). The Petitioner also does not assert on appeal that, in the alternative, she qualifies for second-preference classification as an individual of exceptional ability.

The Petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, the Petitioner must show that what she asserts is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In this case, the Petitioner has not met that burden.

In summation, the record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2). We reserve our opinion regarding whether the Petitioner satisfies any of the criteria set forth in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015).

[3] As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

III. CONCLUSION

We conclude that the Director properly revoked the approval of the petition because the record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree; therefore, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.