U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28087054

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a general manager and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification, 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 (1) that the Petitioner is eligible for EB-2 classification as an individual of exceptional ability and (2) that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their 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, under section 203(b)(2) of the Act. The implementing regulations define "advanced degree" 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).

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] If

[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 aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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.

As noted, the Director denied the petition based on two independent and alternative grounds. First, the Director concluded the Petitioner did not establish eligibility for EB-2 classification as an individual of exceptional ability.[3] The Director analyzed the Petitioner's claims and evidence and determined she (1) did not satisfy any of the six evidentiary categories at 8 C.F.R. § 204.5(k)(3)(ii) (A)-(F) and (2) did not show that she possesses a degree of expertise significantly above that ordinary encountered in the sciences, arts, or business. Second, the Director concluded the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner did not meet any of the three prongs of the *Dhanasar* analytical framework.

On appeal, the Petitioner solely addresses the Director's determination that she did not establish her eligibility for a national interest waiver under the *Dhanasar* framework. She does not contest the Director's determination that the record does not establish her eligibility for EB-2 classification. The brief's only reference to the underlying EB-2 classification is a statement that she "sought to classify herself as a member of the professions holding an advanced degree." However, she does not allege any error on the part of the Director in evaluating her eligibility for EB-2 classification as either an advanced degree professional or an individual of exceptional ability.

As the Petitioner does not contest the Director's determination that she did not establish her eligibility for EB-2 classification, we deem this issue to be waived. If the affected party does not address issues

[3] The record reflects that the Petitioner initially claimed eligibility as both a member of the professions possessing an advanced degree and as an individual of exceptional ability. In a request for evidence (RFE), the Director evaluated her initial evidence and informed the Petitioner that neither of her Brazilian "technologist" degrees is the foreign equivalent of a U.S. bachelor's degree or advanced degree. The record supports this determination. Although the Petitioner submitted a credentials evaluation indicating that she possesses the equivalent of a bachelor's degree based on a combination of her education and professional experience, the Director appropriately advised her that USCIS will only consider experience in conjunction with a U.S. bachelor's degree or foreign equivalent degree when evaluating whether a petitioner possesses an advanced degree. The record reflects that the Petitioner re-submitted her academic records, work experience letters, and the same evaluation of her education and work experience in response to the RFE but did not specifically address the deficiencies noted by the Director. Therefore, her response did not overcome the Director's initial determination that she did not establish her eligibility as a member of the professions holding an advanced degree.

raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-,* 24 I&N Dec. 762, 767 n.2 (BIA 2009). Accordingly, we will dismiss the appeal.

Moreover, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding her eligibility for the requested national interest waiver. *See INS v. Bagamasbad,* 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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). As noted, to establish eligibility for a national interest waiver, a petitioner must first demonstrate their qualification for the underlying EB-2 visa classification. Here, the Petitioner has not done so, and the petition will remain denied.

ORDER: The appeal is dismissed.