U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24187213

Date: JAN. 17, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an economist, seeks classification as a member of the professions holding an advanced degree. 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 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 Nebraska Service Center denied 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. 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 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) of the Act. The regulations define an advanced degree as either "any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate" or a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2). The regulations further specify that, in order to establish the equivalent of an advanced degree by a combination of education and experience, a petition must be accompanied by an official academic record showing that the individual has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employers showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i).

The Director acknowledged that the record establishes the Petitioner holds "the equivalent of a U.S. bachelor's degree in professional socio-economic education." However, the Director found that the Petitioner "did not indicate what [his] specialty in the United States would be, other than manufacturing unidentified healthcare products" and that, therefore, the Director "could not ascertain whether [his] letters of experience have probative value" for determining whether the Petitioner had at least five years of progressive experience in the specialty, as required by 8 C.F.R. § 204.5(k)(2). The Director further observed that the Petitioner's reported work history as a sales manager and director does not directly relate to his experience as an entrepreneur in the freight trucking industry. Based on those issues, the Director concluded that the Petitioner did not satisfy the requirements at 8 C.F.R. § 204.5(k)(3)(i) and, therefore, did not establish second-preference eligibility.

On appeal, the Petitioner asserts that his degree "is relevant to [his] proposed endeavor" and that he "completed at least seven and one half years of progressive training and work experience in [s]ales [m]anagement and related areas." However, the Petitioner does not submit information on appeal that addresses how the Director may have erred in concluding that he did not provide sufficient information regarding the healthcare products he intends to manufacture.

Initially, the Petitioner described the endeavor as a plan "to continue to work in my area of expertise. I intend to continue using my unique knowledge and expertise in the field of [e]conomics." The Petitioner asserted that he has "a business plan of manufacturing products that is new to US and entire world and I'm planning to produces and manufacturing those products within the US territory [*sic*]." The Petitioner further stated that the referenced products are "confidential information" but that they "improve health and prolong life." The Petitioner also asserted that he "plan[s] to open a factory to produce this product in the US and create new jobs."

In a request for evidence (RFE), the Director informed the Petitioner that, because the Petitioner did not "indicate what your specialty in the United States will be, other than manufacturing unidentified products, we cannot ascertain whether your letters [of experience] have probative value" and the Director requested additional information regarding the proposed endeavor.

In response to the Director's RFE, the Petitioner substantially changed his description of the proposed endeavor. Rather than asserting that he would manufacture unidentified healthcare products in a factory, the Petitioner asserted in response to the RFE that he "will bring [his] unique global perspective and valuable transferrable skills to the trucking industry; specifically, I plan to develop my trucking company [that he founded in 2020] further." In the RFE response, the Petitioner did not elaborate on the unidentified healthcare products referenced in support of the petition. The Petitioner reasserts on appeal that his endeavor would be "in the field of the trucking industry," without reference to the unidentified healthcare products discussed above.

A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Because the Petitioner founded his trucking company in 2020, after the 2018 petition filing date and because the Petitioner's initial description of the proposed endeavor did not include operating a trucking company, both the trucking company and the plan to continue operating it present a new set of facts that do not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249; *Matter of Izummi*, 22 I&N Dec. at 176. Because they do not establish eligibility, we need not address them further.

We note that the Petitioner asserts that he has employment experience selling and distributing "yogurt, milk, flavored milk, fruit juices, and other soft drinks." However, the record does not establish whether the unidentified healthcare products the Petitioner proposed to manufacture would be sufficiently similar to the dairy and juice products the Petitioner sold and distributed in order for his experience to be in the specialty, as required by 8 C.F.R. § 204.5(k)(2).[1] Because the record does not establish the endeavor's specialty, it does not establish whether the Petitioner's post-baccalaureate experience is in that specialty; therefore, the record does not establish that the Petitioner is an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(3)(i).

In summation, the Petitioner has not established that he qualifies as an advanced degree professional; therefore, he is not eligible for second-preference classification. Section 203(b)(2) of the Act. We reserve our opinion regarding any remaining issues. *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 the Petitioner has not met the requisite second-preference classification, 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.

[1] Furthermore, because the Petitioner asserted both in response to the RFE and on appeal that he intends to operate a trucking company, without reference to continuing his plan to manufacture the unidentified healthcare products that he initially stated the proposed endeavor would entail, the Petitioner appears to have abandoned his pursuit of the proposed endeavor. Therefore, whether the Petitioner's experience is in the specialty of the proposed endeavor he has abandoned appears to be moot.