U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23373575

Date: JAN. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, and 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner's proposed endeavor is of national importance, or that a waiver of the job offer requirement would, on balance, benefit the United States. 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, withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

An advanced degree is 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).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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,[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. ADVANCED DEGREE PROFESSIONAL

The Petitioner initially claimed to qualify as both an individual of exceptional ability and a member of the professions with "the equivalent of an Advanced Degree." The Director concluded that the Petitioner did not establish exceptional ability, and the Petitioner does not dispute this conclusion on appeal.

The Petitioner states, on appeal, that the Director "incorrectly denied the petitioner's qualification as an Advanced Degree professional." The Director, however, concluded that the Petitioner "has established he is a professional holding an advanced degree." Nevertheless, we disagree with the Director's conclusion. We will remand the matter to afford the Petitioner the opportunity to respond to the information below.

When he filed the petition in November 2018, the Petitioner claimed the following timeline:

- September 2009–July 2012: The Petitioner earned a three-year degree in business administration at [redacted] Business School in France. All subsequent claimed education and employment took place in Brazil.
- September 2013–January 2014: The Petitioner owned and operated [redacted].
- March 2014–May 2015: The Petitioner worked for [redacted].
- April 2015–November 2016: The Petitioner earned a two-year master's degree in business administration at [redacted]
- June 2015–April 2018: The Petitioner worked for [redacted]
- August 2018: The Petitioner arrived in the United States as an O-1 nonimmigrant.
- November 2018: The Petitioner filed the immigrant petition on his own behalf.

A credential evaluation by a professor at the City University of [redacted] indicates that, "based exclusively on Academics," the Petitioner holds the equivalent of a United States baccalaureate degree, and thus the Petitioner's Brazilian degree does not qualify as an advanced degree. But the evaluation further indicates that the Petitioner also accumulated "[f]ive years and seven months" of "Qualifying Experience and Training." A U.S. baccalaureate degree or foreign equivalent degree and five years of progressive post-baccalaureate experience in the specialty is equivalent to a master's degree. 8 C.F.R. § 204.5(k)(2).

[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).

The Director concluded that the Petitioner's degrees and post-baccalaureate experience are equivalent to an advanced degree. Further review of the record, however, casts doubt on this conclusion.

For employment experience to count as being equivalent to a master's degree, the experience must follow, not precede, the baccalaureate degree. 8 C.F.R. § 204.5(k)(2). The Petitioner has not claimed that his 2012 French degree, by itself, is equivalent to a U.S. baccalaureate degree. The educational equivalency evaluation cited both the French degree and the later Brazilian degree as being collectively equivalent to a U.S. baccalaureate degree; the evaluation indicates that the three-year French degree, alone, is equivalent to three years of study toward a four-year U.S. baccalaureate degree. If so, then the Petitioner's post-baccalaureate experience did not begin until after he completed his Brazilian degree in November 2016, just two years before he filed the petition in November 2018. His claimed experience at [redacted] and much of his claimed employment at [redacted] precedes November 2016.

Even then, the record does not consistently establish five years of employment experience before the filing date. The claimed employment at [redacted] and [redacted] totals about four years of employment experience. The Petitioner's résumé, as originally submitted, indicates that he worked for [redacted] for four to five months, from September 2013 to January 2014. Business and tax filings confirm that the Petitioner formed [redacted] in late August 2013, and the company began operating in early [redacted] 2013. These periods of employment add up to less than the required five years.

The evaluator indicated that "[f]rom July 2012 to January 2014, [the Petitioner] was employed as Manager at [redacted]." The evaluator cited no supporting evidence and the Petitioner did not submit a letter from that claimed employer. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. But we may give less weight to an advisory statement if it is not in accord with other information or is in any way questionable. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). After the Director issued a request for evidence, the Petitioner submitted a revised résumé, removing the reference to [redacted] and replacing it with the claim that he worked for [redacted] from July 2012 to January 2014. The Petitioner has not submitted a letter from [redacted] to confirm and describe this claimed employment, as required by 8 C.F.R. § 204.5(g)(1).

The credential evaluation relies on uncorroborated claims of employment in 2012 and early 2013, and the Petitioner has not shown that his claimed employment before 2016 was post-baccalaureate. Therefore, the Petitioner has not established that, when he filed the petition, he held either an advanced degree or five years of post-baccalaureate experience.

III. DEROGATORY INFORMATION

The above information casts doubt on the Petitioner's eligibility for classification as a member of the professions holding an advanced degree, but review of government records raises additional questions. The petition that granted him O-1 nonimmigrant status was filed by [redacted] Company in November 2017, with receipt number [redacted]. The nonimmigrant petition indicated that he would be employed in the category of "athletes & related workers." An O-1 petitioner must be the beneficiary's employer or agent. 8 C.F.R. § 214.2(o)(2)(i). The record, however, does not show that [redacted] Company employed the Petitioner or acted as his agent.

After the approval of the O-1 petition, the Petitioner applied for a nonimmigrant visa at the U.S. consulate in São Paulo, Brazil in January 2018. On his application, he indicated that he was then employed as a sales manager at [redacted]. But when asked for information about previous employment, the Petitioner did not mention [redacted] or [redacted]. Instead, he indicated that he had been employed as a '[redacted]' at [redacted] Athletic Club from June 2012 to January 2017. When asked "Have you attended any educational institutions at a secondary level or above?," the Petitioner responded "no."

The employment proposed in the O-1 petition and the Petitioner's statements from January 2018 conflict with key claims in the present petition. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead USCIS to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

The conflicting information is material to the present proceeding because the Petitioner seeks an immigrant classification based on education and employment experience. Past employment is also material to the determination that the Petitioner is well-positioned to advance his proposed endeavor. Misrepresentation of this material information in order to obtain immigration benefits can result in a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Because there is no indication that the Director was aware of the above information when adjudicating the immigrant petition, we will withdraw the Director's decision and remand the matter for a new decision taking this information into account.[2] The Director may issue a request for evidence, a notice of intent to deny the petition, or both, in order to afford the Petitioner an opportunity to supplement the record and address any apparent discrepancies.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] In August 2022, while this appeal was pending, the Petitioner filed a second Form I-140 petition on his own behalf, again seeking a national interest waiver. That petition, with receipt number [redacted], was approved in November 2022. The record of proceeding for the approved petition is not part of the file before us, and therefore we cannot determine whether the approved petition relied on similar claims to the petition now on appeal.