U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25674818

Date: MAR. 08, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a dentist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, 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 that the Petitioner was eligible for and merited a national interest waiver. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

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. If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent 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[3], 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. EB-2 CLASSIFICATION

The Petitioner seeks classification as an individual of exceptional ability, but the Director determined that she qualifies as a member of the professions holding an advanced degree. After review, we disagree with and withdraw the Director's conclusion, and remand this matter for them to consider whether the Petitioner's eligibility as an individual of exceptional ability.

The Petitioner indicated on Form ETA-750 that she earned a master's degree in restorative dentistry from [redacted] University in July 2017, and repeated that claim in her curriculum vitae. While the record includes a letter from that institution offering her a student position in its distance learning program, it lacks any evidence that she ever participated in or graduated from this program. Other evidence regarding the Petitioner's education includes a "Certificate of Completion of Studies" from [redacted] University of Medical Sciences [redacted] indicating that she completed the bachelor degree course of study in dental surgery on July 10, 2010, and transcripts from the University of [redacted] showing that she completed five years of study towards a bachelors of pre-clinical dentistry degree. Neither document, or other evidence in the record, explains whether these two institutions are related or the Petitioner transferred her credits from one to the other.

As noted above, in order to qualify as a member of the professions holding an advanced degree, a petitioner must establish that they hold a United States degree or foreign equivalent degree above that of baccalaureate, or a United States baccalaureate degree or foreign equivalent followed by five years of progressive experience in the specialty. Here, the Petitioner did not submit an educational evaluation or other evidence that her degree from [redacted] is equivalent to an advanced degree from an accredited college or university in the United States. Based on the information contained in the record, we conclude that the Petitioner has not met her burden to establish the U.S. equivalency of her foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B).

[3] *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).

Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge (last visited Mar. 7, 2023). Although the database reflects that a *Doctorai-e Dandanpezeshki* (Doctor of Dental Surgery) degree is the a foreign equivalent of a first professional degree in dentistry in the United States with up to six years of credit on a course-by-course basis, the Petitioner does not hold such a degree. EDGE further states that undergraduate degrees in Iran earned following between 130 and 140 semester hours of credit are equivalent to United States bachelor's degrees. It is not apparent from the documentation the Petitioner provided that she holds the equivalent of a United States advanced degree. Rather, the record indicates that she holds the equivalent of a United States bachelor's degree.

In addition, the record lacks evidence of the Petitioner's progressive, post-degree experience as a dentist, dental surgeon or researcher in the dental or aesthetic surgery fields. Such evidence must take the form of letters from current of former employers and include the name, address, and title of the writer as well as a specific description of the duties performed. 8 C.F.R. § 204.5(g)(1). The Petitioner has therefore not established that she qualifies as a member of the professions holding an advanced degree, and we withdraw the Director's decision regarding this issue.

The Director did not evaluate the Petitioner's claim of eligibility as an individual of exceptional ability, so we are remanding the matter for them to do so.

III. NATIONAL INTEREST WAIVER

If the Director concludes that the Petitioner is eligible as an individual of exceptional ability, they should then determine whether she is eligible for and merits a national interest waiver in accordance with the discussion below.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In their decision, the Director found that the Petitioner's proposed endeavor "to work as a General Manager and Managing Director of Dream Aesthetic Academy" was of substantial merit. However, we note that the Petitioner initially submitted a statement in which she indicated that her work would be in the national interest "due to my extensive experience and successful career in medical research."[4] She further explained that she intended "to find a substitute of PMMA which is lighter, thinner, more

[4] The Petitioner indicated on Forms I-140 and ETA-750 that her proposed employment would be as a doctor, but did not provide any further information or evidence relating to this endeavor, including any evidence relating to a license to practice as a dentist, oral surgeon, or any other type of medical practitioner.

aesthetic, less osteoclast, faster regenerates, and cheaper to manufacture." It was only in response to the Director's request for evidence (RFE) that she submitted her plan to operate a "provider of high-level training services regarding facial cosmetic and maxillofacial surgeries."

The purpose of an RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The information the Petitioner provided in the response to the Director's RFE did not clarify or provide more specificity to an initially described proposed endeavor, but rather it changed the nature of her proposed endeavor from acting as a researcher to management of a company. Accordingly, the RFE response presented a new set of facts regarding the work she will perform, which is material to eligibility for a national interest waiver. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978); see also *Dhanasar*, 26 I&N Dec. at 889-90.

Because the evidence regarding the Petitioner's proposed management of her training and sales business was an impermissible material change, on remand the Director should only consider the evidence relating to her initial proposed endeavor when determining if it is of substantial merit and national importance.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director did not consider this prong in their decision. On remand, the Director should analyze whether the evidence regarding the Petitioner's claimed education and experience as discussed above makes her well positioned to pursue her endeavor as a researcher, as well as the sufficiency of her plans for future research activities, progress towards achieving her proposed endeavor, and the interest of relevant entities or individuals in her proposed research endeavor.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

The Director concluded, based upon the Petitioner's second proposed endeavor, that it would not be beneficial to the United States to waive the EB-2 classification's job offer requirement. On remand, the Director should focus on the Petitioner's initial proposed endeavor in performing their analysis under the third prong of the *Dhanasar* analytical framework.

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