U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29241595

Date: JAN. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). He also seeks a national interest waiver of the job offer requirement attached to the EB-2 immigrant classification. *See* section 203(b)(2)(B)(1) of the Act.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner established his eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not establish that he is eligible for, and otherwise merits as a matter of discretion, 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

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 as 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).

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 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 claims to be eligible for the EB-2 immigrant classification as both a member of the professions holding an advanced degree and as an individual of exceptional ability.

A. Advanced Degree Professional

In the decision denying the petition, the Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. For the reasons provided below, we withdraw the Director's determination.

The Petitioner submitted the following evidence related to his education:

- Transcript and certificate of completion of "*Latu Sensu*" specialization postgraduate studies, MBA in Strategic Business Management, [redacted], awarded in July 2015.
- Transcript and diploma for Title of Technologist degree in Marketing Management, [redacted], awarded in April 2011.
- Education evaluation by United States Credential Evaluations, indicating that the Petitioner's technologist degree is equivalent to two years of undergraduate study in management and that he has "sufficient years of specialized training and work experience to equate to . . . college coursework in Marketing and Management."

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

[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).

This evidence does not support the Director's conclusion that the Petitioner has either a foreign equivalent degree above that of a bachelor's degree or a foreign equivalent of a U.S. bachelor's degree followed by five years of progressive experience in the same specialty. *See* 8 C.F.R. § 204.5(k)(2) (defining "advanced degree").

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), a *lato sensu* course certificate is not necessarily evidence of completion of a graduate degree program.[4] The database states that *lato sensu* or "wide sense" graduate programs "lead toward a professional certificate, not to graduate degrees; graduate credits may be awarded."[5] The database contrasts this with *stricto sensu* or "strict sense" graduate programs which do lead toward graduate degrees.[6] Although the Petitioner submitted an evaluation of his academic credentials, the evaluator does not discuss his *lato sensu* MBA certificate specifically, does not address the distinction between *lato sensu* and *stricto sensu* programs in Brazil, and does not state that this *lato sensu* course certificate should be considered equivalent to a U.S. advanced degree. Therefore, we conclude that the Petitioner has not established that his MBA certificate is the equivalent of an academic or professional degree above that of a bachelor's degree. *See* 8 C.F.R. § 204.5(k)(2).

The information provided by the EDGE database also indicates that a Brazilian "title of technologist" is awarded following two to three years of university study. This is consistent with the evaluator's determination, as the evaluator did not determine that the technologist degree alone was the foreign equivalent of a bachelor's degree. An individual who does not possess at least a U.S. bachelor's degree or foreign equivalent degree is ineligible for classification as an advanced degree professional. The regulatory definition of advanced degree requires at least a bachelor's degree or foreign equivalent degree and does not permit a combination of lesser degrees and/or experience. Accordingly, the Director's determination that the Petitioner is eligible to be classified as a member of the professions holding an advanced degree is withdrawn.

B. Exceptional Ability

The Petitioner claimed, in the alternative, that he is eligible for classification as an individual of exceptional ability. The record reflects that the Petitioner submitted evidence relating to five of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) at the time of filing. The Director did not address this evidence or the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability in the request for evidence (RFE) or in the final decision.

We have reviewed the record and determined that it is insufficient, as presently constituted, to establish that the Petitioner meets the initial evidence requirements for this classification. For example, although the Petitioner claims he has 10 years of relevant full-time work experience under 8 C.F.R. § 204.5(k)(3)(ii)(B), he did not provide "evidence in the form of letter(s) from current or former

[4] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[5] *See* https://www.aacrao.org/edge/country/glossary/brazil for more information.

[6] *Id.*

employers" in support of this claim; rather he relied on a letter from an individual who states she has been his accountant since 2005. The Petitioner provided evidence of his annual income for the years 2012 to 2014, he did not provide evidence demonstrating how the remuneration he commanded for his services is indicative of his claimed exceptional ability relative to others working in the same field under 8 C.F.R. § 204.5(k)(3)(ii)(D). Further, although the Petitioner provided evidence of his membership in the Financial Planning Association (FPA), he did not provide any information about the FPA or evidence demonstrating that it is a "professional association" as required by 8 C.F.R. § 204.5(k)(3)(ii)(E).

These and other evidentiary deficiencies related to the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(F) were not addressed in the Director's RFE issued on November 4, 2022, and the Petitioner has therefore not had the opportunity to address them. Therefore, we will remand this matter to the Director for further evaluation of the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability, and for the additional reasons provided below.

III. NATIONAL INTEREST WAIVER

The Director determined that the Petitioner did not establish that he satisfies any of the three prongs set forth in the analytical framework established by *Matter of Dhanasar*.[7] On appeal, the Petitioner asserts that the Director's analysis of his eligibility for the requested national interest waiver contained numerous errors of fact and law and did not adequately explain why the evidence he provided was insufficient to meet his burden of proof.

In addressing the first prong of the *Dhanasar* framework, the Director observed, incorrectly, that the Petitioner "intends to work as an account assistant," erroneously referred to the Petitioner's field of proposed employment as "brand strategy," and determined that the Petitioner "has not provided a detailed description of the proposed endeavor." The Director observed that "[a]t no point in the petition do you describe what your proposed endeavor is beyond working as an account assistant." On this basis, the Director concluded that the Petitioner did not meet his burden to establish that his proposed endeavor is of national importance; the decision does not reach a determination as to whether the Petitioner established the substantial merit of the proposed endeavor.

The Director's determination that the Petitioner intends to work as an "account assistant" in the field of "brand strategy" is contrary to the evidence of record, in which the Petitioner consistently indicates his intent to work as a financial manager. This repeated error suggests that the Director may have been referencing evidence submitted in support of an unrelated petition. Further, the Director's conclusion that the Petitioner did not describe his proposed endeavor fails to address his professional plan and its description of the proposed endeavor and its national importance. Nor did the Director address other evidence submitted in relation to the first prong of the *Dhanasar* framework, which included an expert opinion letter. The decision also contains a reference to a request for evidence (RFE) issued on November 22, 2022, in which the Director allegedly "sought further documentation of the Petitioner's proposed endeavor." The RFE in this matter was issued on November 4, 2022, and did not

[7] The Director also observed that the Petitioner did not submit, as required, the employee-specific portions of a permanent labor certification (either on Form ETA 750B or Form ETA 9089). *See* 8 C.F.R. §204.5(k)(4)(ii); *see generally* 6 USCIS *Policy Manual* F.5(D), https://www.uscis.gov/policy-manual. However, the record reflects the Petitioner submitted a completed Form ETA 750B at the time of filing.

in fact request any additional evidence pertaining to the proposed endeavor or to the first prong of the *Dhanasar* framework.

As to the third prong of the *Dhanasar* framework, the Director, once again referring to the Petitioner's "future endeavors as an account assistant," concluded that he "has not established 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." The Director's decision stated the law and the relevant considerations in performing the third prong's balancing analysis. However, the Director did not sufficiently identify or discuss the evidence they weighed in balancing those considerations or meaningfully address the Petitioner's specific claims regarding his eligibility under the third prong. The Director's analysis of the second prong of the *Dhanasar* framework is similarly lacking any specific discussion of the Petitioner's evidence.

Overall, the errors noted, particularly the erroneous references to the nature of Petitioner's proposed endeavor, and the lack of discussion of the specific evidence in the record, make it unclear whether the Director fully analyzed the evidence submitted by the Petitioner and based the decision solely on that evidence. An officer must explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). This explanation should be sufficient to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Because the Director's did not sufficiently explain the reasons for finding the Petitioner ineligible under the *Dhanasar* framework, we will withdraw the decision. On remand, the Director should review the entire record in considering whether the Petitioner has sufficiently identified his proposed endeavor and whether he has established eligibility under each of the three prongs of the *Dhanasar* framework.

IV. CONCLUSION

This matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying EB-2 classification as an individual of exceptional ability and for a national interest waiver. The Director may request any additional evidence considered pertinent to the new determination prior to issuing a new decision.

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