U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26375026

Date: APR. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a language specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 the record did not establish the Petitioner's eligibility for a national interest waiver under the Dhanasar framework. 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.

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. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n 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 employer(s) 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)(B).

The Director did not analyze whether the Petitioner qualifies for the underlying EB-2 classification. The record reflects that in August 2006, the Petitioner earned a Brazilian Título de Licenciado in Portuguese and English. In 2008, the Petitioner earned a graduate Licenciatura in advanced English. Although the Petitioner provided an academic equivalency evaluation concluding the Petitioner's Título de Licenciado is the foreign equivalent of a U.S. bachelor's degree, the record does not support this conclusion. Rather, the academic records accompanying the Petitioner's certificate state that she began her studies in 2003, which indicates that her Título de Licenciado is a three-year credential. Additionally, the evaluation does not discuss the U.S. academic equivalency of the foreign Licenciatura. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Here, the Petitioner's academic record indicates she earned the Título de Licenciado after three years of study. Without more a detailed and individualized analysis of her education, we question the accuracy of an evaluation that concludes the Petitioner has the foreign equivalent of a U.S. bachelor's degree, which is typically awarded after four years of study. Accordingly, we conclude the evaluation holds little probative value in this matter.

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. For more information, visit https://www.aacrao.org/edge. According to the database, a Título de Licenciado is a teaching qualification awarded after two to four years of academic study. The database does not indicate that a "teaching qualification" is the equivalent of a bachelor's degree. Moreover, as the Título de Licenciado may be awarded after only

[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).

two years of study, we conclude that it is not the foreign equivalent of a U.S. bachelor's degree.[2] For this additional reason, the evidence does not demonstrate the Petitioner's has the equivalent of a U.S. bachelor's degree.[3]

Without a minimum of a U.S. bachelor's degree or foreign equivalent, the Petitioner cannot qualify as an advanced degree professional, regardless of whether she has at least five years of experience. Even if we determined her education is the equivalent of a U.S. bachelor's degree, we would not conclude the Petitioner has at least five years of post-baccalaureate experience in the specialty. The Petitioner provided several employment letters, none of which state whether she worked full-time or part-time.[4] The ETA 750 Part B, which the Petitioner signed under penalty of perjury, states she worked in two forty-hours-per-week employment positions from 2008 to 2014. In addition, during most of this time period, the Petitioner asserted she also volunteered as an English teacher. Without more information and explanation, we question the accuracy of the Petitioner's assertion that she worked two full-time jobs while also volunteering. Accordingly, the Petitioner has not established she qualifies as an advanced degree professional.[5]

B. Substantial Merit and National Importance

Because the Petitioner has not established eligibility for the EB-2 classification, her eligibility for a national interest waiver under the Dhanasar framework is moot. Nevertheless, because the Director determined the Petitioner had not established eligibility under Dhanasar, we provide additional analysis below. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

The first prong, substantial merit and national importance, focuses on the specific endeavor 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.

The Petitioner initially stated her endeavor is to advance her career as a language specialist. To do this, she plans to create, develop, and teach courses to help academic institutions, organizations, and businesses. She further plans to recruit, hire, train, and evaluate other teachers. In response to the Director's request for evidence (RFE), the Petitioner stated she will create her own company, United Academy, which will offer an education program to "assist social integration by allowing students to learn Portuguese and/or English, thus providing students with greater opportunities in their career future."

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[2] Because the evidence does not indicate the Petitioner earned a Título de Licenciado after four years of study, we need not analyze whether a four-year Título de Licenciado would be the equivalent of a U.S. bachelor's degree.

[3] The database does not provide credential information regarding the equivalency of a graduate Licenciatura. Based upon the evidence provided, we conclude the Petitioner may have completed graduate courses, but the U.S. equivalency of those courses remains unclear.

[4] Some of the employer letters indicate the Petitioner worked in fields other than her claimed specialty. For instance, the Petitioner's work experience in tourism and real estate does not appear to involve teaching or language instruction. Additionally, the Petitioner gained some work experience prior to earning a Título de Licenciado.

[5] The Petitioner has not asserted her eligibility as an individual of exceptional ability. Therefore, we do not analyze this issue.

Although the endeavor has substantial merit,[6] we nevertheless conclude the Petitioner has not established the national importance element of Dhanasar's first prong. While we acknowledge the endeavor may impact the individual students or businesses that hire her for her services, it is not apparent how this impact rises to the level of national importance. Through articles and reports, the Petitioner emphasized the importance of education, learning a language, and the shortage of teachers in the United States, particularly foreign language teachers. We agree that the fields of education and language learning are important, and that success in these fields may lead to greater career opportunities and economic advantages. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. Instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Dhanasar, 26 I&N Dec. at 889. While the Petitioner proposes to work in an important industry or field, this is not necessarily sufficient to establish the national importance of the specific proposed endeavor.

In Dhanasar, we determined the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. Likewise, we conclude the Petitioner has not established how her teaching activities will extend beyond her individual students to impact the field of education. We reviewed the Petitioner's business plan, including its revenue and employment projections. The Petitioner did not sufficiently describe the origin or basis for these projections and as such, they appear to be little more than conjecture. Even if the Petitioner had established a sufficient basis for these projections, they would not establish the national importance of the proposed endeavor. Specifically, the projections do not suggest the proposed endeavor will operate on a level that reaches the "substantial positive economic effects" contemplated in Dhanasar. Id. at 890. Although foreign language proficiency may enhance career opportunities and social integration, the Petitioner has not offered a sufficiently direct connection between her services and any benefits to the U.S. regional or national economy.

Further, she has not suggested she will lessen the shortage of teachers or teach on a scale rising to the level of national importance, nor has she demonstrated that her teaching methods or techniques are unknown or unavailable in the United States. The Petitioner provided support letters from former students and clients who praise the Petitioner's abilities and past success. While the authors described the results the Petitioner achieved for individual students, professionals, and corporate clients, they did not provide detailed accounts of how the Petitioner's work impacted the field of education or the nation as a whole. Accordingly, we conclude the record does not establish the national importance of the proposed endeavor.

III. CONCLUSION

The record establishes neither the Petitioner's eligibility for the EB-2 classification, nor the proposed endeavor's national importance. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the remaining prongs outlined in Dhanasar would serve no meaningful purpose.

[6] To the extent the endeavor advances the Petitioner's career as a language specialist, we do not necessarily conclude this aspect of the endeavor has substantial merit.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.