U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27893962

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree. *See* 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 (USCIS) 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 Texas Service Center denied the petition, concluding that the record does not establish the Petitioner qualifies for classification as a member of the professions holding an advanced degree. 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 a member of the professions holding an advanced degree 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 found that the record does not establish that the Petitioner's "foreign three-year baccalaureate degree" is equivalent to a U.S. baccalaureate degree and, thus, that she does not qualify

as a member of the professions holding an advanced degree when combining that degree with experience. *See* 8 C.F.R. § 204.5(k)(2). The Director acknowledged that the record contains an evaluation of the Petitioner's education and work experience that opines the Petitioner has the equivalent of a U.S. bachelor's degree in tourism and hospitality management. However, the Director noted that USCIS may disregard questionable advisory opinions, citing *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Calif.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The Petitioner did not assert, and the record does not support the conclusion, that the Petitioner qualifies for second-preference classification in the alternative as an individual of exceptional ability. *See* section 203(b)(2) of the Act.

On appeal, the Petitioner reasserts that the academic evaluation in the record establishes that the Petitioner's foreign degree is equivalent to a U.S. bachelor's degree, and that a combination of her degree and her work experience qualifies her for classification as a member of the professions holding an advanced degree.

The record contains a two-page document titled "Evaluation of Education and Work Experience," from United States Credential Evaluations. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Although, as the Director acknowledged, the evaluation opines that the Petitioner "has an equivalent of a U.S. Bachelor's Degree in Tourism and Hospitality Management," the evaluation directly contradicts that opinion. The evaluation summarizes other documents in the record that indicate the Petitioner completed a three-year "Bachelor's Degree in Tourism" program at the Universidade [redacted] in Brazil, in 2003. The evaluation further states that the American Association of Collegiate Registrars and Admissions Officers (AACRAO) EDGE database "specifically lists the Bachelor degree of three years of duration from Brazil to represent attainment of a level of education *comparable to three years of undergraduate study in the United States*" (emphasis added). We further note that, in a second place, the two-page evaluation states, "U.S. Equivalent Degree(s): 3 Years of Undergraduate Programs – Major in Tourism and Hospitality Management," not that the petitioner's degree is equivalent to a U.S. baccalaureate degree.

The academic evaluation's acknowledgement that the AACRAO EDGE database indicates the Petitioner's degree is "comparable to three years of undergraduate study in the United States," rather than being comparable to completing a United States baccalaureate degree program, along with the second statement that the equivalent degree is "3 Years of Undergraduate Programs," rather than the completion of a baccalaureate program, directly contradict the evaluator's opinion that the Petitioner's foreign, three-year degree is the "equivalent of a U.S. Bachelor's Degree in Tourism and Hospitality Management." Whether the degree in question is equivalent to a U.S. bachelor's degree is material

because it is essential to determining whether the Petitioner may qualify as a member of the professions holding an advanced degree by virtue of a combination of that degree and her experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). Given the academic evaluation's directly contradicting information regarding the U.S. academic level to which her foreign, three-year degree is equivalent, and given the materiality of that determination, the academic evaluation bears minimal probative value. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795; *see also Matter of V-K-*, 24 I&N Dec. at 502 n.2.

Setting aside the academic evaluation that bears minimal probative value for the reasons discussed above, the record does not otherwise establish that the Petitioner has earned at least a U.S. baccalaureate degree or a foreign degree equivalent to at least a U.S. baccalaureate degree; therefore, she does not meet the minimum academic threshold for qualification as a member of the professions holding an advanced degree through a combination of education and experience. *See* 8 C.F.R. § 204.5(k)(2).

In summation, the record does not establish the Petitioner qualifies as a member of the professions holding an advanced degree, and the Petitioner does not assert, and the record does not support the conclusion, that she qualifies in the alternative as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act. We reserve our opinion regarding whether the record satisfies the criteria set forth in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *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).

The record does not establish that the Petitioner qualifies for second-preference classification either as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.