U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28950235

Date: NOV. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an operations manager, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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 the record did not establish: (1) the Petitioner qualified for the EB-2 classification; (2) the national importance of the proposed endeavor; (3) the Petitioner is well positioned to carry out the endeavor; or (4) that it would be in the United States' interest to waive the requirement of a labor certification. 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. LEGAL FRAMEWORK

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.

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] 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.

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[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. ANALYSIS

After the initial filing of the petition, the Director issued a request for evidence (RFE) to the Petitioner. When issuing the RFE, the Director did not analyze the Petitioner's eligibility as an individual of exceptional ability, but rather explained that the evidence did not establish the Petitioner qualified for the underlying classification as an advanced degree professional. The Director acknowledged the Petitioner's academic record, but explained:

> [The] evidence includes letters from current and former employers demonstrating years of experience. However, the letters are insufficient as the authors do not provide details about the work the self-petitioner engaged in while employed with their organization. As such, the letters do not show years of progressive experience in the field and the self-petitioner does not qualify for the requested classification as a member of the professions holding an advanced degree.

In his RFE response, the Petitioner did not provide any additional evidence or arguments regarding his eligibility for the underlying classification as either an advanced degree professional or individual of exceptional ability. Rather, the Petitioner resubmitted the same evidence he already provided to evidence his eligibility for the EB-2 classification.

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[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. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[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).

The Director denied the petition, stating the Petitioner did not qualify for the underlying classification as an advanced degree professional. The Director provided similar analysis to that which the RFE already provided. The Director's decision did not analyze the Petitioner's eligibility as an individual of exceptional ability.

On appeal, the Petitioner does not address the Director's determination regarding his eligibility for the underlying classification, but rather jumps straight to his eligibility under the Dhanasar framework.[4] Therefore, we consider the issue of his eligibility for the underlying classification to be abandoned. See Matter of R-A-M-. 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also Sepulveda v. U.S. *Att'v Gen.,* 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing United States v. Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

As explained above, 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.[5] Because the Petitioner abandoned a threshold issue, the remainder of the Petitioner's arguments need not be addressed. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach but hereby reserve arguments concerning the Petitioner's eligibility for the underlying EB-2 classification and under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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).

III. CONCLUSION

As the Petitioner has not established that he qualifies for the underlying EB-2 classification, he has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.

[4] On appeal, the Petitioner reasserts his eligibility under each prong of the Dhanasar framework but does not specifically identify any erroneous conclusion of law or statement of fact in the Director's decision, as required under 8 C.F.R. § 103.3(a)(1)(v). As such, the appeal may be summarily dismissed on this issue alone.

[5] In our review, we conclude the evidence is insufficient to establish the Petitioner's academic record amounts to the foreign equivalent of a U.S. bachelor's degree. Although we need not reach the particulars of this issue, the Petitioner should be aware of this in any future filings.