U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28049126

Date: SEP. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst, seeks classification as an individual of exceptional ability in the sciences, arts, or business, or a member of the professions holding an advanced degree. 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. Section 203(b)(2)(B)(i) of the Act. 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 did not establish that the Petitioner's proposed endeavor has national importance, that the Petitioner is well-positioned to advance that endeavor, or that, on balance, it would be in the interests of the United States to waive the job offer requirement. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.

Neither the statute nor the pertinent regulations define the term "national interest." *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates that: (1) the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the

noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

A. Qualifications for EB-2 Classification

The Director found that the Petitioner qualifies for the EB-2 classification as an advanced degree professional. For the reasons below, we will withdraw this finding and further conclude that the Petitioner does not qualify as an EB-2 individual of exceptional ability.

1. Advanced Degree Professional

The term "advanced degree" is defined at 8 C.F.R. § 204.5(k)(2) as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree . . .

The regulations at 8 C.F.R. §§ 204.5(k)(3)(i)(A)-(B) state that a petition for an advanced degree professional must be accompanied by either an official academic record showing that the noncitizen has an advanced degree, or by an official academic record showing that the noncitizen has a baccalaureate degree, accompanied by employer letters demonstrating the five required years of progressive experience in the specialty. A petitioner must establish eligibility for the requested benefit as of the time of filing. 8 C.F.R. § 103.2(b)(1).

The Director found that the Beneficiary qualifies as an advanced degree professional through a combination of her foreign baccalaureate degree and five years of progressive post-baccalaureate work experience. The record indicates that the Petitioner's foreign degree is equivalent to a U.S. baccalaureate degree in economics. However, it does not support a finding that she had five years of relevant progressive post-baccalaureate work experience as of the time of filing.

The Petitioner states that she has the following relevant post-baccalaureate work experience:

- Investment Research Analyst Internship at [redacted] – June 16, 2020, to January 26, 2021 (date of filing);
- Country Representative and Special Projects Assistant at [redacted] University Admissions Office of Graduate Programs [redacted] – November 14, 2018, to June 16, 2020;
- Independent Financial Consultant for [redacted] and [redacted] – June 2016 to October 2018; and
- Financial Analyst for [redacted] – July 14, 2014, to April 15, 2016.

First, the Petitioner's duties at [redacted] were related to university admissions, not the field of finance, and so that position is not work experience in her specialty, as required by 8 C.F.R. § 204.5(k)(2). Second, the work experience letters from [redacted] do not indicate

whether the Petitioner was employed full-time when she worked for both companies simultaneously. It is therefore not apparent how much post-baccalaureate work experience she gained at those organizations. Third, we note that part of the Petitioner's work experience at [redacted] occurred prior to her completion of her bachelor's degree, and so cannot qualify as post-baccalaureate experience. Therefore, the Petitioner does not meet the requirement of five years of progressive post-baccalaureate experience in the specialty.

The petition included an education equivalency evaluation which states that the Petitioner has the equivalent of a U.S. master of science degree in finance. The evaluation bases this conclusion on the premise that the Petitioner has over five years of post-baccalaureate work experience in her field, as required to show equivalency under 8 C.F.R. § 204.5(k)(2), but counts both her pre-baccalaureate work at [redacted] and her non-finance work at [redacted] towards this total without providing any reasoning as to why these constitute qualifying work experience.[1] Because this evaluation is not in accord with the evidence of record or the relevant regulation, we will not grant it any evidentiary weight. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (stating that we may give less weight to or decline to accept an expert opinion that is not in accord with other information or is in any way questionable). The Petitioner has not submitted evidence establishing that she qualifies as an advanced degree professional through a combination of a baccalaureate degree and five years of work experience in her specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

We acknowledge that the Petitioner was enrolled in a U.S. master's degree program in her field as of the time of filing and was scheduled to graduate in December 2021.[2] However, eligibility must be demonstrated as of the time of filing. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner's U.S. master's degree enrollment therefore cannot establish her eligibility in this case.

Finally, there is no indication that the Petitioner's graduate certificate in business, which she earned in 2018, constitutes an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (listing degrees, diplomas, and certificates as different kinds of educational credentials that can be used to establish exceptional ability for the EB-2 classification). Therefore, the Petitioner did not provide an official academic record showing that she had a U.S. advanced degree or foreign equivalent degree as of the time of filing. 8 C.F.R. § 204.5(k)(3)(i)(A).

The record does not establish that as of the time of filing, the Petitioner had a qualifying advanced degree or a combination of a baccalaureate degree and five years of progressive post-baccalaureate experience in her specialty. Therefore, she does not qualify for the EB-2 classification as an advanced degree professional. 8 C.F.R. § 204.5(k)(3)(i).

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[1] The evaluation also refers to what it calls "the '3-for-1 Rule' [which] states that three years of relevant work experience is equal to one year of education." This method of calculating educational equivalency only applies to beneficiaries of H-1B specialty occupation visas. 8 C.F.R. § 214.2(h)(4)(iii)(D). We further note that even under this regulation, equivalence to a master's degree requires five years of relevant work experience, not three. *Id.*

[2] The Petitioner's October 2021 response to the Director's request for evidence (RFE) included a resume stating that she is an "MBA graduate," but did not include a diploma or other evidence that she had completed her degree program at that time. The appeal also does not include such documentation.

2. Individual of Exceptional Ability

A petitioner seeking to be classified as an individual of exceptional ability in the sciences, arts, or business must initially submit evidence that meets at least three of the six initial evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A)-(F).[3] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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. 8 C.F.R. § 204.5(k)(2). In this instance, the Petitioner has not provided evidence meeting at least three of the initial evidentiary criteria, for the reasons below.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner's Brazilian baccalaureate degree in economics and the accompanying academic transcripts meet this criterion.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time work experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner's professional history began in 2014 and the instant petition was filed in 2021, seven years later. Also, as noted above, the evidence does not establish that her employment with [redacted] and [redacted] was full-time. She therefore does not have 10 years of full-time work experience in her specialty and does not meet this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner establishes eligibility for this criterion through her Banking and Credit Analyst certification from the [redacted]

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D).

To establish her qualifications under this criterion, the Petitioner initially submitted income documentation and a webpage printout indicating that the median annual wage of finance managers in [redacted], Florida is $92,284. However, this evidence does not establish the salaries of workers who are comparable to the Petitioner, given that her U.S. employment was as a financial intern in New York. Furthermore, even if we accepted this evidence as probative, which we do not, the provided

[3] 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).

[redacted] internship pay statements indicate that the Petitioner was paid $3,125 every two weeks, or $81,250 a year, which is lower than the indicated median wage for her occupation.[4]

In her RFE response, the Petitioner provided an expert opinion letter from Professor J-N- of [redacted] University, which compares her wage of $110,000 as a [redacted] analyst[5] to the average U.S. financial analyst wage provided by Salary.com, which was $62,621. This figure is not specific to workers in New York, and the website at the address provided does not state the origin or sample size of its wage data.[6] Both of these factors significantly lower the probative value of this website's information, and as such, we decline to accept Professor J-N-'s conclusions regarding the Petitioner's qualifications under this criterion. *Caron Int'l, Inc.*, 19 I&N Dec. at 795.[7] The provided evidence does not establish by a preponderance of the evidence that the Petitioner's U.S. wages or other remuneration are demonstrative of exceptional ability.

While the Petitioner provided documentation of her income in Brazil, she did not provide any evidence comparing it to that of others in her field. She therefore has not established that she commanded a salary or other remuneration which demonstrates exceptional ability in her field.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

To establish eligibility under this criterion, the Petitioner submitted a document from [redacted] stating that she is a registered member of this organization, "thus enjoying all the rights and prerogatives . . . to exercise the profession of economist." The only documentation provided regarding [redacted] states that it is a "Federal Authority supervising the profession of economist, endowed with legal personality . . . [and] with administrative and financial autonomy . . . [and] has approximately 2 thousand members." This documentation does not state [redacted] membership requirements, and as such does not establish that it is an association of professionals as contemplated by regulation. *See* 8 C.F.R. § 204.5(k)(2) (defining a profession as an occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum entry requirement).

Similar concerns exist regarding the Financial Management Association (FMA) and American Association of Individual Investors (AAII). The documentation from FMA states that its "members include finance practitioners and academicians and students" interested in its mission, and the documentation from AAII does not state any membership requirements. This evidence is insufficient to demonstrate that FMA and AAII are professional associations.

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[4] The Petitioner's income at [redacted] is not pertinent to this criterion since that job was not in the field of finance.

[5] We acknowledge the provided documentation regarding the Petitioner's wages as an analyst at [redacted] However, the Petitioner was offered this position in January 2022, a year after the present petition was filed, and so it cannot be used to establish her eligibility. 8 C.F.R. § 103.2(b)(1).

[6] *Financial Analyst Salary in the United States*, https://www.salary.com/research/salary/listing/financial-analyst-salary (last visited Sep. 27, 2023, and added to the record).

[7] While not stated by the Director, we further note that according to the Department of Labor's Bureau of Labor Statistics, the average U.S. wage of financial and investment analysts is $95,080, and the average wage of such workers in New York is $123,950. Dep't of Labor, Employment & Training Admin., *New York Wages 13-2051.00 Financial and Investment Analysts*, https://www.onetonline.org/link/localwages/13-2051.00?st=NY (last visited Sep. 26, 2023).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

In order to demonstrate eligibility under this criterion, the Petitioner submitted letters of support and an article from the website [redacted] First, there is no indication that [redacted] is the Petitioner's industry peer, a governmental entity, or a professional or business organization. Second, while the article quotes the Petitioner regarding economics, it does not name any achievement or significant contribution for which she is being recognized, and so does not establish eligibility under this criterion.

The various support letters from the Petitioner's coworkers all indicate that she is a capable and diligent worker. However, none of these letters name an achievement or significant contribution that the Petitioner has made to the field of finance. Instead, they give examples of how her work has benefitted the teams and companies she has worked for. For example, the letter from R-J-M- of [redacted] states that an industry presentation the Petitioner created received so much positive feedback that it "has become the 'standardized template' for every one of [redacted] industry reviews." The letter does not indicate that this work had any influence in the broader field of finance beyond [redacted] Similarly, T-R-D- and V-A- of [redacted] give examples of how the Petitioner gave presentations and trained other analysts at the organization, but do not indicate that she taught or trained anyone outside of [redacted] or that her presentations otherwise constituted a significant contribution to the financial industry. The Petitioner therefore has not established that she has been recognized by her peers, governmental entities, or professional or business organizations for achievements and significant contributions in her field, and so has not established eligibility under this criterion.

The Petitioner has not met three of the initial evidentiary criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A)-(F), and as such we need not conduct a final merits analysis to determine whether she has a degree of expertise significantly above that ordinarily encountered in business. *See* 8 C.F.R. § 204.5(k)(2); *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 generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual (describing the two-step analysis used to determine eligibility for the exceptional ability classification). The record does not establish that the Petitioner is an individual of exceptional ability.

Because the Petitioner has not established that she is an advanced degree professional or an individual of exceptional ability, she is not eligible for the EB-2 classification. While this ineligibility is dispositive in this case, the petition was denied solely based on the Petitioner's qualifications for a national interest waiver. We will therefore address this matter below.

B. National Interest Waiver

The first prong of the *Dhanasar* test pertains to whether the proposed endeavor would have both substantial merit and national importance. An endeavor may have national importance if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

The Director's denial states that the Petitioner did not submit sufficient information to establish what her endeavor would be beyond working as a financial advisor, and an undifferentiated occupation does not constitute an endeavor in the context of adjudicating a national interest waiver petition. *See generally* 6 *USCIS Policy Manual*, *supra* at F.5(D)(1) ("The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation.").

The denial further states that while the Petitioner provided documentation about the importance of her occupation and industry, she did not state what specific impact her endeavor, in and of itself, would have on the U.S. economy or the field of finance. The documentation regarding the Petitioner's abilities and qualifications spoke to the second *Dhanasar* prong, which addresses whether the Petitioner is well-positioned to advance the endeavor, rather than showing what that endeavor's impact would be. Therefore, the Director concluded that the Petitioner had not established her endeavor's national importance.[8]

On appeal, the Petitioner provides a brief stating that the Director erred in law and fact and that the Petitioner's endeavor will have a nationally important impact on her field and the U.S. economy.[9] We will first address the Petitioner's potential impact on the field of finance. "An undertaking may have national importance . . . because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances." *Dhanasar*, 26 I&N Dec. at 889. According to the appeal brief, the "proposed endeavor involves impacting the finance field by providing lucrative financial strategies for U.S. based companies." The brief further states that the Petitioner "will influence other professionals with the use of her methodology in researching companies and industries using a template . . ." and will impact her field by using methodologies such as the discounted cash flow (DCF) model in her work. Finally, the Petitioner cites her past record of success and points out the impact she has had on the companies she has worked for as an indication of the impact her endeavor will have in the future.

Upon review, the Petitioner has not sufficiently documented that her endeavor will have a nationally important impact. The unsubstantiated assertions of counsel do not constitute evidence. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Here, the record does not contain sufficient probative, relevant, and credible documentation to support the appeal brief's contention that methods such as the DCF model or the Petitioner's industry analysis template constitute an improvement or advancement for the financial industry. *Matter of Chawathe*, 26 I&N Dec. at 376 (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)) (discussing the requirements of the "preponderance of the evidence" standard). While the brief states that the Petitioner's letters of support "testify to the dissemination" of her work throughout the financial industry, none of these letters specify any contribution the Petitioner made which had a wider impact than her employers, coworkers, or clients. For example, the letter from her coworker K-P- of [redacted] states that the Petitioner created a tracking spreadsheet to automate data analysis tasks and that this

[8] The denial does not state whether the endeavor has substantial merit. However, since the endeavor's national importance is dispositive in this case, we need not reach the issue of substantial merit and hereby reserve it. *See Bagamasbad*, 429 U.S. at 25.

[9] The brief does not specify what fact or law the Director erred in applying.

tracker "has become an ongoing resource for our team." However, there is no indication that this spreadsheet, or any of the Petitioner's other work, has been or is likely to be adopted beyond her employers by the wider finance industry. As noted by the Director, simply performing an occupation, even capably, does not constitute a cognizable endeavor. The Petitioner has not documented how her endeavor in particular would broadly impact the field of finance nationally or internationally.

The Petitioner also asserts that her endeavor will have a nationally important economic impact. An endeavor may be considered to have such an impact if it "has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area . . ." *Matter of Dhanasar*, 26 I&N Dec. at 890. The appeal brief states that the Petitioner's endeavor will "help small and medium-sized enterprises in the U.S. improve operations and achieve better productivity and profitability levels, therefore generating revenues within the country and creating employment opportunities." This statement does not quantify what economic benefit the Petitioner's individual work as a financial analyst would generate in terms of employment levels, business activity, or trade. Furthermore, it is not supported by relevant, probative, and credible documentation of how the endeavor would produce economic benefits extending beyond her employers to the broader finance industry. *See Matter of Chawathe*, 26 I&N Dec. at 376. As such, the brief does not establish that the endeavor's economic impact would rise to the level of national importance.

Similar concerns apply to the Petitioner's statements regarding the general economic importance of her occupation, immigrant labor, and trade between the U.S. and Brazil. The pertinent question in determining national importance is not the importance of an occupation or industry, but the specific impact an endeavor will have. *Matter of Dhanasar*, 26 I&N Dec at 889-90. As explained above, the Petitioner has not established her endeavor's economic impact because she has not provided documentation demonstrating what potential economic effects would be specifically attributable to her individual work as a financial analyst. *Id.*

The Petitioner asserts that her endeavor will have national importance due to a shortage of U.S. financial analysts, but does not specify how her employment, in and of itself, would resolve this shortage or impact it on a national level.[10] Finally, as noted by the Director, the evidence of the Petitioner's professional capabilities and past achievements relate to the second *Dhanasar* prong regarding whether the Petitioner is well-positioned to advance the proposed endeavor. It does not establish what specific impact or importance this endeavor would have.

The Petitioner has not met the requisite first prong of the *Dhanasar* framework by establishing that her endeavor will have national importance.

III. CONCLUSION

Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and we hereby reserve them. *See*

[10] We further note that the Department of Labor addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885; *see also* 20 C.F.R. § 656.1.

Bagamasbad, 429 U.S. at 25; *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 Petitioner has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Additionally, we will withdraw the Director's conclusion that the Petitioner is eligible for the EB-2 classification. The petition will remain denied.

ORDER: The appeal is dismissed.