U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42259161

Date: APR. 1, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, a pharmacist, seeks employment-based second preference (EB-2) immigrant classification as 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner is an individual of exceptional ability. Specifically, SCOPS determined that although the Petitioner met at least three of the six exceptional ability criteria, she did not establish she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. SCOPS also concluded that the Petitioner is not eligible for a waiver of the job offer requirement in the national interest. The matter is now before us on appeal pursuant to 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.

The Petitioner filed the instant petition in June 2025, claiming that her proposed endeavor is to work as a pharmacist in the United States through her company, [redacted] "providing pharmaceutical regulatory consulting services and generating jobs in HUBZones from New Jersey and New York." The record demonstrates that the Petitioner worked as a pharmacy assistant and intern prior to obtaining a bachelor's degree in pharmaceutical sciences from [redacted] in January 2018 and worked as a pharmacist in Brazil from April 2018 to January 2022.

The first issue to be addressed is whether the Petitioner established her eligibility for EB-2 classification either as an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. The Petitioner claims eligibility as an individual of exceptional ability.[1]

[1] The Petitioner has not asserted at any time in these proceedings that she is a member of the professions holding an advanced 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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

SCOPS concluded that the Petitioner met three out of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), and (E), but the record did not establish that she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. We adopt and affirm SCOPS' decision as it relates to the finding that the Petitioner is not an individual of exceptional ability with comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Here, SCOPS thoroughly evaluated the submitted evidence in determining that the Petitioner met three of the initial criteria. SCOPS also correctly analyzed the record as a whole to conclude that the Petitioner did not establish she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. In the final merits analysis, the quality of the evidence must be evaluated, including its relevance, probative value, and credibility. *See Matter of Chawathe*, 25 I&N Dec. at 376. SCOPS reviewed the Petitioner's statement, educational and training records, and employment records in finding that she did not demonstrate how her education and training set her apart from others in the field of pharmaceutical services, and that she has a degree of expertise significantly above others ordinarily encountered in the field. SCOPS discussed the letters of support, noting that she is well regarded by her colleagues, but they lack relevant details showing that her credentials and skills rise above the average licensed pharmacist. SCOPS further mentioned her identity card issued by the Regional Council of Pharmacy of the [redacted] which is the standard requirement to work in the field of pharmacy in Brazil and her recent memberships in the Academy of Managed Care Pharmacy and the Union of Pharmacists since 2024. Therefore, SCOPS properly concluded that such evidence does not reflect a degree of expertise significantly above that in her proposed field.

On appeal, the Petitioner does not provide additional documentation to show that she is an individual of exceptional ability but contends that "[h]er specialized mastery of Homeopathic Pharmacy, Therapeutic Drug Monitoring (TDM), and Regulatory Compliance goes far beyond the standard duties of a general pharmacist." However, the record does not sufficiently corroborate such specialized skills

[2] 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).

and experience in homeopathic pharmacy, therapeutic drug monitoring or regulatory compliance that makes the Petitioner significantly above that ordinarily encountered in the field of pharmaceutical services. In addition, the Petitioner states that she is "in the final stages of completing a postgraduate degree with formal program completion expected by the end of this calendar year (2026)" and this postgraduate degree will further "enhanc[e] her academic and professional standing in the field," but we cannot consider "facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). The Petitioner must establish eligibility at the time of filing for the requested benefit. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Although the Petitioner summarily contends that she was denied fair chance to obtain her immigration benefit, her appellate brief does not meaningfully dispute SCOPS' specific findings as they relate to her claimed eligibility for the underlying EB-2 classification.

Based on the foregoing, the Petitioner has not established that she is an individual of exceptional ability. While we note that the Petitioner has steadily progressed in the field, starting as a pharmacy assistant to working as a pharmacist after obtaining her degree, she has not demonstrated exceptional ability beyond that which is ordinarily encountered in the occupation. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the eligibility for a national interest waiver.[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[3] If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions.