U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37299691

Date: APR. 09, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneurial producer and director, 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).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for classification as an individual of exceptional ability and a discretionary waiver of the job offer requirement, and thus a labor certification, was not merited upon application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AA)O 2016). 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.

I. LAW

To establish eligibility for a national interest waiver, a petition 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, but only if a petitioner categorically establishes eligibility in the EB-2 classification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

(A) 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;

(B) 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 experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

But meeting at least three criteria 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.

If we conclude that a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, *see supra*. *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner is an entrepreneur in the information technology industry seeking to demonstrate eligibility in the EB-2 classification based on their exceptional ability.[1] A petitioner must demonstrate expertise significantly above that ordinarily encountered to show that they are of exceptional ability. We agree with the Director's conclusion that the Petitioner is not of exceptional ability and therefore categorically ineligible for the EB-2 permanent immigrant classification.

The Director concluded that the Petitioner met one of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Director concluded that the Petitioner demonstrated she met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B), [2] but did not meet any two of the remaining criteria.[3] And because the Petitioner did not meet the required three of the six criteria, the Director was not required to and did not proceed with a final examination of the record in totality to evaluate if the Petitioner had a degree of expertise significantly above that ordinarily encountered in her field to merit a determination of exceptional ability. Upon de novo review, we agree with the Director's conclusion the Petitioner did not demonstrate eligibility for EB-2 permanent immigrant classification for the reasons set forth 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).

We conclude the Petitioner has not met this criterion. In support of her eligibility under this criterion, the Petitioner submitted an acceptance letter from [redacted] evidencing her acceptance into an [redacted] for a four-month period in 2023 prior to filing the petition. The record does not contain evidence reflecting completion of the program. So, we are unable to determine if the Petitioner received a degree, diploma, certificate or similar award upon completion of the program. But, even if such documentation existed or was present in the record, it would still be insufficient to support the Petitioner's eligibility under this criterion for two separate and distinct reasons. Firstly, there is no evidence in the record to support the [redacted] status as an institute of learning. And the [redacted] relates to an area other than the entrepreneurial producer and director area the Petitioner claims exceptional ability in. The Petitioner also submitted certificates from the [redacted] and [redacted] that were insufficient for the same reasons. [redacted] not an institute of learning and the Petitioner's participation in a drawing contest does not relate to the Petitioner's claimed area of exceptional ability functioning as an entrepreneurial producer and director.

The record contains two "certificates" earned from the [redacted] (sic) [redacted]" Whilst it appears the Pontificia Universidade

[1] The Petitioner does not claim eligibility for, nor do they submit evidence seeking, classification in the EB-2 permanent immigrant category as an advanced degree professional.

[2] We conclude the Petitioner has submitted sufficient evidence demonstrating at least ten years of full-time experience in the occupation they seek to fulfill meeting the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B).

[3] The Petitioner did not assert eligibility or provide evidence in support of eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(D) as an alien who commanded a salary, or other remuneration for services, which demonstrated exceptional ability.

[redacted] may be a college, university, school, or other institute of learning, the record does not reflect that the certificates the Petitioner earned are similar to degrees, diplomas, certificates or similar awards issued by colleges, universities, schools, or other institutes of learning. Moreover, the record does not demonstrate how [redacted] and [redacted]' relate to the entrepreneurial producer and director in which the Petitioner claims exceptional ability.

So, we conclude the Petitioner has not met the requirements of 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).

In response to the Director's request for evidence (RFE), the Petitioner submitted a letter from [redacted] and a "press pass" confirming she worked as a journalist with the editorial department reporting on music and entertainment and the news. Evidence in the record indicates [redacted] is a professional and industry group for journalists, press photographers, and reporters. The Petitioner asserts that this is sufficient evidence of the licensure or certification required to perform the duties of the journalist profession. Licenses and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job. The record does not adequately support that the a "press pass" and a letter of confirmation from the [redacted] are required to perform the duties the Petitioner intends to undertake in their proposed endeavor as an entrepreneurial producer and director. And, in so far as the "press pass" and letter of confirmation facilitate an individual to gain press credentials, it is not sufficiently clear that from the evidence in the record that press credentials are mandatory for a journalist, press photographer, or reporter to carry out the duties of their position. So, we cannot conclude the Petitioner has a license to practice the profession or certification for a particular profession or occupation.

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

The Petitioner submitted evidence of her membership in [redacted] of [redacted] The Petitioner contends her memberships in these two trade unions demonstrates her eligibility under this criterion. But the memberships in trade unions are not memberships in a professional association. A trade union is typically an organized association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests. The record does not sufficiently describe the composition of the unions and whether they are composed of professionals or employees at all levels of employment. Consequently, the record does not convincingly describe the Petitioner's trade union as a professional association as that term is contemplated in the regulations, and we conclude the Petitioner has not met this criterion.

Comparable Evidence

The petitioner submitted various media articles regarding the accomplishments some of her clients have achieved as comparable evidence to demonstrate her exceptional ability. But this evidence and contention is insufficient. The regulation at 8 C.F.R. § 204.5(k)(3)(iii) states that a petitioner may submit comparable evidence to establish the beneficiary's eligibility as an alien of exceptional ability if the criteria at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply. However, a petitioner must nevertheless identify which criteria do not apply, why they do not apply, and how the comparable evidence supplants the inapplicable criteria and tends to demonstrate a petitions' exceptional ability. Here, the petitioner did not declare and demonstrate why the standards do not readily apply to her occupation. Nor did she demonstrate with material, relevant, and probative documentation and assertions that the documentation she submitted tended to reflect her exceptional ability in her field. So, we remain unconvinced by the media articles and other evidence the Petitioner identified as "comparative" and tending to support her claims of exceptional ability.

III. CONCLUSION

The Petitioner has not established eligibility in at least three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). So, they cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). We need not reach and hereby reserve the question of the Petitioner eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F) because our consideration of the Petitioner's eligibility under the other regulatory criteria is dispositive of the Petitioner's appeal. And we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. In addition, we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.