U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38023322

Date: APR. 25, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a paralegal, 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 Petitioner did not establish eligibility for EB-2 classification or for a national interest waiver. 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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. *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.

[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).

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. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

As stated above, to be eligible for a national interest waiver, a petitioner must first establish they are eligible for the EB-2 classification; either as a member of the professions holding an advanced degree or as an individual of exceptional ability. SCOPS concluded that the Petitioner is not eligible for the EB-2 classification and after de novo review of the evidence; we agree. The Petitioner initially applied as a member of the professions holding an advanced degree. SCOPS concluded that the Petitioner's proposed occupation as a paralegal does not meet the definition of "profession."[3] On appeal, the Petitioner does not address this issue. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, the issue of the Petitioner's eligibility for EB-2 classification as a member of the professions holding an advanced degree is waived.

In response to the request for evidence (RFE), the Petitioner submitted documentation asserting eligibility as an individual of exceptional ability; contending that he meets four of the six criteria. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Specifically, the Petitioner contends that he has a degree in the area of exceptional ability, that he has ten years of full-time experience in the occupation, that he has membership in a professional association, and, finally, that he submitted evidence of recognition of achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(A),(B),(E), and (F). SCOPS concluded that while the Petitioner does have a degree in the area of exceptional ability and membership in a professional organization; the record did not establish ten years of full-time experience or recognition for achievements and significant contributions to the industry. Therefore, he only established that he meets two of the criteria, and not at least three, as is required for eligibility as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

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[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act. Profession is defined as one of these occupations, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

As stated above, SCOPS determined that the Petitioner did not establish recognition of achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(F). On appeal, the Petitioner does not address this issue. As above, any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. at 336 n.5 (citing *Matter of R-A-M-*, 25 I&N Dec. at 658 n.2). Therefore, the issue of the Petitioner's eligibility for recognition of achievements and significant contributions to the industry under 8 C.F.R. § 204.5(k)(3)(ii)(F) is waived. The Petitioner focuses his appeal on his eligibility for 8 C.F.R. § 204.5(k)(3)(ii)(B). The Petitioner asserts that SCOPS erred in concluding that because the evidence was not in the form of letters from current or former employers, the record did not establish ten years of full-time experience. The Petitioner contends that he meets this criterion as he submitted documentation which should be considered comparable evidence.

To meet this criterion, the regulations state the Petitioner must submit "[e]vidence 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." 8 C.F.R. §204.5(k)(3)(ii)(B). The requisite letters must also comply with 8 C.F.R. §204.5(g)(1) which states,"[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received." Further, the regulations state, "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." 8 C.F.R. §204.5(k)(3)(iii). A petitioner should explain why the regulatory criteria does not readily apply to his occupation, as well as why the evidence he has submitted is "comparable" to that required under 8 C.F.R. 204.5(k)(3)(ii). [4]

The Petitioner lists his occupation in the petition as "Legal Services/Paralegal." The Petitioner asserts that SCOPS erred in not considering the evidence he submitted in support of his experience in the legal field. The Petitioner contends that employment letters do not readily apply to his work and comparable evidence is, "especially relevant in legal practice, where many professionals work as consultants or solo practitioners and do not always have traditional employment contracts." This explanation of why employment letters do not readily apply to his occupation, however, only relates to one of the Petitioner's periods of employment; when he worked as a solo practitioner from 2018 to 2022. Nevertheless, the evidence in support of his work as a solo practitioner cannot be considered as comparable evidence as it does not provide sufficient information for us to properly evaluate if he has at least ten years of full-time experience in the occupation per 8 C.F.R. §204.5(k)(3)(ii)(B). He provides a document of legal representation from 2019 along with two letters from companies that he provided legal advice to during this period. However, these documents do not describe his duties, do not state if he worked on a full-time basis, and do not list specific dates of employment covering the entire period of 2018 to 2022. Therefore, this evidence is not comparable as it does not provide the proper information for us to evaluate his experience in the occupation.

The Petitioner submits additional documentation in support of his employment, however none of the documentation complies with the regulations at 8 C.F.R. §204.5(k)(3)(ii)(B) and 8 C.F.R. §204.5(g)(1). Although the Petitioner claims that the evidence provided "is sufficient and comparable to letters from current or former employers," for comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to

[4] *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual.

his or her occupation.[5] Here, the Petitioner merely asserted that evidence on record be accepted as comparable evidence but did not explain why he is not able to provide letters from previous and current employers attesting to the Petitioner's ten years of experience with relevant dates of employment, hours worked, and description of duties. Therefore, the Petitioner did not demonstrate that he meets this criterion.

The record establishes that the Petitioner was employed as an assistant attorney for the civil courts in [redacted] Venezuela from January 23, 2014, to April 10, 2015. The employment letter that is submitted provides us with some of the required information regarding his employment; however, it does not provide any information about the duties of the position. Therefore, it does not satisfy the regulation at 8 C.F.R. §204.5(g)(1). Per the Petitioner's curriculum vitae, the Petitioner served as court clerk manager for this same employer from 2014 to 2015. We note that there is a conflict in the record between the Petitioner's curriculum vitae and the submitted employment letter as to the dates he served in each position with this employer. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As evidence of his employment as court clerk, the Petitioner submitted a judgement decision from November 17, 2014, which lists him as a court clerk. However, the Petitioner did not submit a letter from his previous employer reflecting the position of court clerk. The Petitioner has not established that the regular standard would not readily apply, and in fact, as the record contains an employment letter from this same employer regarding his position as assistant attorney, the record establishes that the regular standard applies. Even if we were to consider the judgement decision, it does not further his claim of at least ten years of full-time experience in the occupation as it does not list his dates of employment, whether he worked full-time, and his duties while serving as court clerk.

The Petitioner submitted documentation regarding is his employment for the district attorney's office in [redacted] Venezuela. The Petitioner provided documents of legal representation from 2016 which to establish his employment during this time. In addition, he provided two letters appointing him to the position of "Attorney I" on April 10, 2015, and "Attorney III" on December 12, 2017. Lastly, he provided a background check from the district attorney office showing he was employed from April 3, 2017, to May 11, 2018. For this period, the Petitioner does not provide a letter from his previous employer meeting the requirements of 8 C.F.R. §204.5(g)(1). Additionally, he does not establish why the regular standard would not readily apply in order for us to consider comparable evidence under 8 C.F.R. §204.5(k)(3)(iii). However, even if we were to accept this evidence, this would not be comparable as it does not provide information about his duties during this time for us to review his experience. Therefore, this too does not meet the criteria set forth at 8 C.F.R. §204.5(k)(3)(ii)(B).

Further, the Petitioner states that he worked for two different law offices in the United States as a paralegal from 2022 to 2024. The record contains a signed and dated page of an employee handbook; along with one pay statement and Form W-2 from 2022 for one employer. In addition, the record contains two pay statements from a second employer. Here too, the Petitioner failed to explain why the regulatory criteria does not readily apply, as well as why the evidence he has submitted is "comparable." Moreover, these documents do not provide the dates of his employment, whether he worked on a full-time basis, or the duties of his positions that would be required if we were to evaluate them for eligibility as comparable evidence. Therefore, the evidence submitted does not meet the requirements of 8 C.F.R. §204.5(k)(3)(ii)(B).

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

Finally, the Petitioner highlights the letters of recommendation and reviews submitted in his RFE response. The Petitioner claims that SCOPS erred in not considering this evidence as comparable evidence to further establish his ten years of full-time experience after concluding that it did not satisfy the criteria at 8 C.F.R. §204.5(k)(3)(ii)(F). This evidence was presented in the RFE response as "highlighting the quality of [the Petitioner's] work and the direct impact [the Petitioner has] with the communities [he] serve[s]." SCOPS properly evaluated these documents as the Petitioner intended, as evidence of his claim under 8 C.F.R. §204.5(k)(3)(ii)(F). If we were to consider this evidence under 8 C.F.R. §204.5(k)(3)(ii)(B), it does not further the Petitioner's claim of ten years of full-time experience. As discussed above, the Petitioner has not established that the required letters from current and former employers do not readily apply to his occupation. The letters of recommendation speak highly of the Petitioner and his legal skills; however, they do not list his duties in his various positions, state if he worked full-time, or discuss the duration of his employment in the relative positions. The Petitioner also provides evidence of three online reviews; however, it is unclear who authored the reviews, who the reviews are about, and when the reviews were written. Further, the reviews show gratitude for the services provided, but do not further establish the Petitioner's duties, duration of employment, or that he worked in a full- time capacity as required by 8 C.F.R. §204.5(k)(3)(ii)(B).

Therefore, the Petitioner has not met the criteria of "[e]vidence 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." 8 C.F.R. §204.5(k)(3)(ii)(B). For the reasons given above, the evidence does not establish that the Petitioner meets the eligibility requirements as an individual of exceptional ability and therefore does not meet the requirements for EB-2 classification. Because the Petitioner has not established that he meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct the final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets prongs one and three under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. Because the Petitioner is ineligible for EB-2 classification, we need not reach and therefore reserve the remaining arguments regarding eligibility for a national interest waiver. *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).

III. CONCLUSION

We conclude that the Petitioner has not established by a preponderance of the evidence that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.