U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37980012

Date: APR. 28, 2025

Appeal of Service Center Operations Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 the requested EB-2 immigrant classification or 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. 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. *Id.*

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*

[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).

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.

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.

Id.

II. ANALYSIS

SCOPS concluded that the Petitioner did not establish eligibility for EB-2 immigrant classification as either an advanced degree professional or an individual of exceptional ability. On appeal, the Petitioner only claims eligibility for EB-2 immigrant classification as an individual of exceptional ability. Because she does not address the issue of her eligibility for EB-2 immigrant classification as an advanced degree professional, we deem this ground to be waived.[3] Accordingly, we will consider her eligibility for EB-2 immigrant classification as an individual of exceptional ability.

SCOPS determined the Petitioner met three of the six evidentiary criteria, including 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), and (C), relating to the attainment of a degree; ten years of full-time experience in the occupation sought; and a license to practice the profession. However, after evaluating the totality of the evidence in the context of a final merits determination, SCOPS concluded that the Petitioner did not establish that she has a degree of expertise significantly above that ordinarily encountered in her field and therefore was not an individual of exceptional ability.

On appeal, the Petitioner contends that, in addition to the three criteria, she meets the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), relating to membership in professional associations and recognition for achievements and significant contributions to the field.[4] And she generally disagrees with SCOPS' conclusions, claiming that it did not apply the correct burden of proof, instead

[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] An issue not raised on appeal is waived. *See, e.g., 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).

[4] Because the Petitioner does not assert error regarding the remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), nor does she claim to meet this criterion on appeal, we consider the issue of eligibility under that criterion to be waived. *See Matter of O-R-E* at 336 n.5.

imposing a stricter standard in its review. Notably, however, beyond her general disagreement, the Petitioner does not explain how a stricter standard of review was applied, nor does she address SCOPS' determination that she did not establish that she possesses a degree of expertise significantly above that ordinarily encountered in her field. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Here, by not addressing SCOPS conclusions in its final merits determination, the Petitioner has failed to sufficiently identify a basis for her appeal. *See Matter of Valencia*, 19 I&N Dec 354, 354-55 (BIA 1986). Nonetheless, we have reviewed the record in the aggregate and similarly conclude that the record does not establish that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in her field.

A. The Regulatory Criteria

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

The Petitioner claims to satisfy this criterion based on her membership in the National Association of Special Education Teachers (NASET) and the National Association for the Education of Young Children (NAEYC). SCOPS concluded that the record did not demonstrate that either association was a "professional association" as contemplated by the regulation. On appeal, the Petitioner asserts that these associations are "highly regarded in the field of education, offering resources, networking opportunities, and professional development"; however, she does not address SCOPS' determination regarding the membership requirements for these associations. Nor does she establish that the minimum requirements for these association demonstrate that they are "professional associations" under the relevant regulations.[5]

While we agree that the record does not establish that either association constitutes a professional association, we need not consider the Petitioner's membership in either association in satisfying this criterion. A petitioner must establish eligibility for a benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (requiring a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed). Here, the record reflects that the Petitioner did not obtain membership in either association until September 2024, six months after filing her Form I-140, Immigrant Petition for Alien Worker. Accordingly, she cannot rely on her membership in these associations to satisfy this criterion.

Without more, the Petitioner has not satisfied this criterion.

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).

The plain language of this criterion requires the Petitioner to establish that she has received recognition for "achievements and significant contributions to the industry or field." SCOPS acknowledged the evidence in the record, including multiple letters of recommendation attesting to the Petitioner's

[5] The regulatory definition of "profession" includes an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent. 8 C.F.R. § 204.5(k)(2).

dedication and success in her prior positions, but concluded that the record did not demonstrate the Petitioner had made significant contributions to her field. On appeal, the Petitioner asserts that her registration with the Massachusetts Department of Early Education and Care "signifies recognition by a reputable government entity," and claims that the letters of recommendation and attest to her expertise, impact, and dedication in the field.

Upon de novo review, we agree that the Petitioner has not satisfied this criterion. First, in regards to her claims made on appeal, the Petitioner has not elaborated on the requirements for registration with the Massachusetts Department of Early Education and Care, or otherwise established how her registration demonstrates significant contribution to her industry. Moreover, while the record contains numerous letters from the Petitioner's former employers, colleagues, and members of her community that praise her skills and abilities, along with evidence of her registration with additional state and local education departments, this evidence also does not identify significant contributions she has made to the industry or field. For example, several of the letters commend the Petitioner for her "dedication to education" as well as her ability to work with special needs students and her genuine care "for the well-being and emotional development of her students," but these letters do not identify a significant contribution she has made to the industry. And while we recognize that one letter praises the Petitioner for distinguishing "herself through her excellent interaction with all members of the school community, demonstrating professionalism, competence, and responsibility," the writer does not explain how this resulted in significant contributions to the field.

Accordingly, while the letters reflect that her work had impact on her employers and her students, including by providing "innovative reflections and ideas that contributed to the holistic development of the children," these letters do not establish how her contributions to the industry—not her employers—were "significant" consistent with the plain meaning of the regulation. Therefore, we cannot conclude that the Petitioner meets this criterion.

B. Final Merits Determination

Although SCOPS determined that the Petitioner satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), upon evaluating the record in its totality, it concluded that the record did not establish the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field.

On appeal, the Petitioner claims that the evidence in the record collectively affirms that she qualifies as an individual with exceptional ability because she meets five of the six evidentiary criterion[6], but, as stated, she does not address or acknowledge SCOPS' determination that the record did not establish she has a degree of expertise significantly above that ordinarily encountered in the field, as required. Nonetheless, we have reviewed the record in the aggregate and similarly conclude that the record does not establish that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in her field.

As a preliminary matter, we reiterate that meeting the minimum requirements of providing at least three types of initial evidence does not, in itself, establish that a petitioner is an individual of

[6] As discussed, we do not agree that the Petitioner satisfies the two additional criteria claimed on appeal.

exceptional ability.[7] In addition to meeting the plain language of the evidentiary criteria, the evidence must then be considered in a final merits determination to determine whether the evidence, in its totality, establishes that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Upon de novo review, we acknowledge that the record demonstrates she has education, training, and several years of experience in the education field, but the record as a whole does not establish she possesses expertise significantly above that ordinarily encountered in the field. Instead, the evidence demonstrates she has met the general qualifications for individuals working in her occupation. And in regards to the Petitioner's membership in professional associations, as stated, because the Petitioner was not a member of these associations at the time of filing, we will not consider her membership in evaluating whether she is an individuals of exceptional ability.[8]

Moreover, although she has demonstrated her extensive experience both working as a teacher and in school administrator positions, she has not explained how this experience, together with her education and training, has provided her with expertise significantly above that ordinarily encountered in the field. Likewise, the Petitioner has not shown that her credentials and qualifications are above what would normally be expected in her field. She did not, for example, compare the knowledge she has gained through her various training certificates to others in her field to demonstrate why this knowledge is *significantly* above that ordinarily encountered in the field. As stated, the Petitioner's training certificate and licensures are common for those working in the industry to enter the field and maintain competitive skills. And, while the record contains numerous recommendation letters, as discussed previously, the letters primarily commend the Petitioner for successfully executing her prior roles, without discussing how her expertise is significantly above that ordinarily encountered in the field.

Accordingly, we conclude that the record, as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability. Although the Petitioner has satisfied three of the initial categories of evidence, the record does not demonstrate that she has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[9]

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Because the Petitioner waived the issue of her eligibility as an advanced degree professional on appeal, and did not establish eligibility as an individual of exceptional ability, she has not demonstrated her eligibility for

[7] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 USCIS Policy Manual, supra, at F.5(B)(2).

[8] *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak* at 49 (requiring a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed).

[9] *See also* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).

EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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

The Petitioner has not demonstrated that she qualifies as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.