U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32459167

Date: AUG. 13, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager consultant, 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for the requested EB-2 immigrant classification. 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.[2] 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

[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).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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. While neither the statute nor the pertinent regulations define the term "national interest," *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,[3] 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

The Petitioner has not claimed she is a member of the professions holding an advanced degree, nor does the record contain evidence that the Petitioner previously earned a U.S. baccalaureate degree or its foreign equivalent. Therefore, to qualify for EB-2 immigrant classification, the Petitioner must establish she is an individual of exceptional ability in the sciences, arts, or business.

A. Exceptional Ability

The Director determined the Petitioner met the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A),(B), and (D). However, after evaluating the totality of the evidence in the context of the final merits determination, the Director concluded that the Petitioner did not establish that she had 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 generally claims that the Director did not apply the correct standard of proof, and instead applied an "overly restrictive and pessimistic interpretation" of the evidence. And the Petitioner claims that the Director allegedly informed her in their request for evidence (RFE) that she was an individual of exceptional ability, but "revoked" this determination in their denial.

As a preliminary matter, while the Director did inform the Petitioner in their RFE that the Petitioner met three of the six regulatory criteria, the Director did not conclude the Petitioner had established she was an individual of exceptional ability. In fact, the Director explicitly informed the Petitioner that:

> *The evidence does not establish the petitioner is an individual of exceptional ability.*

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

When ultimately making a final decision regarding eligibility, we will:

- First evaluate the evidence on an individual basis to determine if it meets the criteria, as discussed in part one; then,

- Consider all of the evidence in totality in making the final merits determination. The final merits determination will determine if the petitioner:
    - Possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

A review of the record does establish that the petitioner does qualify under at least three (3) of the six (6) criteria required for this classification.

[Emphasis added]. The RFE thus offered the Petitioner an opportunity to supplement the record before the Director conducted a final merits determination.

Moreover, we disagree with the Petitioner's assertion that the Director applied a stricter standard of proof in this case. The standard of proof in this proceeding is a preponderance of the evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Upon a de novo review of the record, we agree with the Director's ultimate conclusion that the record does not establish the Petitioner is an individual of exceptional ability with the added comments below pertaining to the Petitioner's satisfaction of the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii) (B) and (D), relating to establishing ten years of full-time experience in the occupation and commanding a salary or remuneration that establishes her exceptional ability.

The Director determined that the Petitioner acquired more than ten years of full-time experience in satisfaction of 8 C.F.R. § 204.5(k)(3)(ii)(B). We disagree, as the evidence corroborating her employment only covered a period of approximately nine years and six months of employment. Specifically, letters from her former employers establish her employment as a financial manager from December 2013 to June 2018 (4 years and 6 months); a finance administrative analyst from June 2008 to August 2010 (2 years and 3 months); and a financial administrative secretary with a dental clinic from May 2005 to January 2008 (2 years and 9 months). Additionally, the Petitioner's experience as described in the letters includes positions that appeared to be primarily administrative in nature, and therefore the record does not establish that all 9 years and 6 months of the Petitioner's employment was "in the occupation sought" of financial manager consultant. As such, the record does not indicate the Petitioner has obtained ten years of full-time experience in the occupation sought as required by 8 C.F.R. § 204.5(k)(3)(ii)(B), and we withdraw the Director's determination to the contrary.

Moreover, while the Director determined that the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), upon review of the record, we disagree and withdraw the Director's determination. In their final merits determination, the Director noted that, because the Petitioner's annual salary of $30,000 in Brazil was significantly lower than the median salary of $139,790 for financial managers reported in the *Occupational Outlook Handbook*, the Petitioner had not established

her salary was indicative of exceptional ability. We agree with the Petitioner's contention on appeal that the Director should not have considered the average salary in the United States, but rather should have evaluated the Petitioner's salary in comparison to others in financial management positions within her area of employment in Brazil. However, because the Petitioner has not provided such evidence, we cannot conclude that the record establishes she has commanded a salary indicative of exceptional ability in satisfaction of 8 C.F.R. § 204.5(k)(3)(ii)(D) and withdraw the Director's determination.

While we do not agree that the Petitioner satisfied three of the six regulatory criteria, we nonetheless will evaluate the totality of the evidence in the context of the final merits determination.

On appeal, the Petitioner contends the Director erred in considering the *Occupational Outlook Handbook*'s statement that financial managers typically have a bachelor's degree and multiple years of related experience because the regulation does not require a petitioner to have obtained a bachelor's degree to establish exceptional ability. Instead, the Petitioner claims that the Director should have evaluated her experience, achievements, and contributions to the field, including the evidence showing she completed multiple financial management courses. While we acknowledge that the regulation does not require a Petitioner to have acquired a bachelor's degree, when conducting a final merits determination, the Director must evaluate whether the evidence shows the Petitioner has "a degree of expertise significantly above that ordinarily encountered" in her field.[4] The general entry-level requirement of a bachelor's degree for the occupation is therefore pertinent to this evaluation. And while the Petitioner asserts that her "extensive experience has allowed [her] to develop exceptional skill and expertise in financial management," she does not identify *what* particular skills she has acquired and *how* those skills compare to others in the field.

The Petitioner asserts, for example, that her certificates and courses attended have "further enhance[ed]" her qualifications, without explaining how those certificates have provided her expertise significantly above that ordinarily encountered in her field. We recognize the Petitioner's submission of certificates demonstrating her completion of a 30-hour Finance for Managers course as part of the [redacted] Executive Education Program, along with a 15-hour online Integrated Business Management course and a 3-hour course on Financial Management both with the Brazilian Support Service for Micro and Small Businesses. However, beyond unsupported assertions, the Petitioner has not explained how these courses compare to the knowledge and education of others in the field, or otherwise represent her exceptional ability in the field. She has not shown, for example, that individuals who complete these courses obtain certain skills beyond those normally encountered in the field. And while the Petitioner asserts that her "achievements as a financial manager, such as optimizing cash flows, identifying investment opportunities, and successfully managing financial resources," demonstrate how she was able to utilize her training from [redacted] these claimed achievements appear to be common duties of a competent financial manager.

We also agree with the Director that the various letters and testimonial evidence discussing the Petitioner's experience in the field do not establish she is an individual of exceptional ability. While she continues to rely on her experience in the field, as previously stated, the recommendation and

[4] 8 C.F.R. § 204.5(k)(2).

employment verification letters highlight that the Petitioner's roles were primarily more administrative in nature, with limited experience as a financial manager. For example, while the Petitioner claims to have worked as a financial manager from December 2013 to June 2018, the letter from the company's founder indicates that she was initially hired as a "financial assistant" and "after a few years appointed to the position of financial manager." As such, it is not clear how long she held a financial manager position with that company. Moreover, when discussing her experience as a financial manager, the letters make broad statements generally praising her ability to successfully execute her duties, without establishing that she has a degree of expertise significantly above that normally encountered. For example, the same letter from the company's founder states "[u]nder her management, the department presented an impeccable workflow, delegating tasks, ensuring deadlines were met and work completed correctly," but this does not establish her exceptional ability, only that she was successful at her position. Similarly, in the letter confirming her employment with their dental clinic, Dr. L-L-A-R-F- states that the Petitioner "made bank reconciliations, accounts payable and transactions in the account, making strategic financial decisions based on the results of diagnosis made," and "allowed the company to save more resources, optimize production and consequently increase profits . . . by up to 13%." Yet beyond a restatement of her duties, the letter does not provide detail into how she was able to improve the company's profits, nor does it elaborate on the significance of a 13% increase in profits.

In addition, she asserts that the letters "*may* contain information about projects, achievements, and specific contributions," "*can* be valuable in showing how [her] experience positively impacted other individuals and organizations," and "*may* contain examples and evidence demonstrating how [her] qualifications and experience remain relevant and beneficial to the United States," but the Petitioner does not identify ways in which the letters in the record do provide this information. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability as it 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).[5]

B. National Interest Waiver

The Petitioner has not established that she is eligible for the EB-2 classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining issues, including whether she is eligible for a national interest waiver. *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 M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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

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.