U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33408636

Date: AUG. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a hospitality manager, 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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.

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

[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).

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 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

On appeal, the Petitioner does not claim that she is an advanced degree professional, nor does the record contain evidence that the Petitioner previously earned a U.S. baccalaureate degree or its foreign equivalent.[4] 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.

The Director determined the Petitioner met five of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). 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 disagrees with the Director's conclusions, and claims they applied a "narrow interpretation" of exceptional ability. We disagree.

Upon de novo review of the record, while we agree with the Director's ultimate conclusion that the Petitioner has not established she is an individual of exceptional ability, for the reasons discussed below, we disagree that the Petitioner has met three of the six evidentiary at 8 C.F.R. § 204.5(k)(3)(ii),

[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.
[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).
[4] In response to the Director's request for evidence (RFE), the Petitioner claimed the Director's acknowledgement of her "educational qualifications" established she is an advanced degree professional. This is incorrect. The Director only acknowledged that the Petitioner earned an associate of arts degree and related certificates; the record does not indicate she has obtained a U.S. bachelor's degree or foreign equivalent degree, and therefore she is not an advanced degree professional as defined by the regulation. *See* 8 C.F.R. § 204.5(k)(2).

and withdraw the Director's determination that the Petitioner met the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(D), (E), and (F).[5]

A. The Regulatory Criteria

Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

After determining that the Petitioner initially met this evidentiary criterion based on her tax returns, W-2s, and pay statements in the record, the Director concluded in their final merits determination that, because the Petitioner's salary was less than the median pay reported for hospitality managers in the *Occupational Outlook Handbook*, the Petitioner had not established her salary was indicative of exceptional ability. We agree. Here, because the plain language of the criterion requires the Petitioner to establish her salary or remuneration demonstrates exceptional ability, we withdraw the Director's determination that the Petitioner met this criterion.

On appeal, the Petitioner acknowledges that her salary is "below the median" salary for hospitality managers, but contends that this does "not negate the fact that she has been recognized by her peers" and otherwise has obtained membership in respected organizations in the industry. Yet, the regulatory criterion requires the Petitioner to establish that her *salary* or *remuneration* is demonstrative of exceptional ability relative to others working in her field.[6] Her recognition by others in the field and her membership in associations are not relevant to that inquiry. The record does not explain how the Petitioner's salary, which is below the median salary of others in the field, is demonstrative of exceptional ability. As such, the Petitioner has not demonstrated that she has commanded a salary indicative of exceptional ability in satisfaction of 8 C.F.R. § 204.5(k)(3)(ii)(D) and we withdraw the Director's determination.

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

The Director determined the Petitioner met this criterion due to her membership in the Meeting Professionals International (MPI) Foundation, Central Florida Hotel & Lodging Association (CFHLC), and American Hotel & Lodging Education Institute (AHLEI). We disagree.

The regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as an occupation listed at section 101(a)(32) of the Act, 8 U.S.C. §1101(a)(32),[7] or an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent. While the Petitioner provided documentation outlining the nature of these organizations, the record does not indicate that any of these organizations require their members to have attained at least a U.S. baccalaureate degree or its foreign equivalent as a minimum requirement for membership. Rather the summaries provided in the record indicate that

[5] The Petitioner does not assert error in the Director's determination regarding the criterion 8 C.F.R. § 204.5(k)(3)(ii)(C), nor does she claim to meet this criterion on appeal. We therefore consider the issue of eligibility under that criterion to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

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

[7] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

the associations are industry associations aimed at offering its members training and educational opportunities and promoting the meetings, events and hospitality fields. And while the associations reference "professionals" among their members, the Petitioner has not shown that these associations limit their members to individuals who meet the regulatory definition of "profession." As such, we cannot conclude that the Petitioner meets this criterion, and we withdraw the Director's determination to the contrary.

> *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).

In their decision, the Director concluded, without discussion, that the Petitioner provided letters of support establishing that she met this criterion. We disagree.

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." The record contains numerous letters from the Petitioner's former employers, colleagues, and peers praising her skills and abilities, along with evidence of various awards and recognition she received from her prior employers. But the evidence does not identify significant contributions she has made to the industry or field. For example, in the letter from the superintendent of [redacted], the writer explains that during a [redacted] event, the Petitioner successfully "devised a strategy to increase tourist traffic in hotels across the state of [redacted] noting that the Petitioner had a "highly positive impact" on the hotels for which she was responsible as commercial manager. Additionally, they commended the Petitioner's ability to simultaneously manage the reservations of 21 hotels, which involved overseeing 2,000 hotel rooms and required the Petitioner's "exceptional organizational and logistical skills." While they stated that this accomplishment resulted in success not only for the companies, "but also ma[de] a notable impact on the industry as a whole," they do not identify the impact to the industry, beyond the benefits to the hotels under the Petitioner's management. Rather, the letter establishes the Petitioner was successful in her prior roles, and was entrusted with large-scale assignments.

The remaining letters also praise the Petitioner's professionalism and discuss her execution of large-scale events, including her role in organizing the logistics of [redacted] a large corporate event attended by entrepreneurs and diplomats from several countries aimed at improving sustainability practices, as well as smaller scale meetings, and workshops through her company S-E-. These letters commend her ability to "deal with problems and adapt to changes," and "work under pressure." However, like the letter discussed above, they do not explain how the Petitioner has made significant contributions to her field.

And, while the Petitioner submitted evidence of awards she received during her employment, as well as numerous online reviews from hotel guests mentioning her by name, and praising her customer service, these do not indicate significant contributions to the field more widely. Likewise, the Petitioner submitted an article referencing her company's involvement in coordinating the [redacted] event, but the article only notes that the Petitioner's company was responsible for coordinating the event and does not identify ways in which the Petitioner's work resulted in significant contributions to her field. For the reasons discussed, we cannot conclude that the Petitioner meets this criterion, and we withdraw the Director's determination.

B. Final Merits Determination

Even though the Petitioner has not established that she meets three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), we have reviewed the record in the aggregate, and conclude that the record does not establish that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in her field.

Specifically, we acknowledge that the evidence demonstrates that the Petitioner has education, training, and a successful career in the hospitality field, as well as memberships in associations promoting the hospitality field. But the record as a whole does not establish she possesses expertise significantly above that ordinarily encountered in the field. We agree with the Director's conclusion that the Petitioner's credentials and qualifications are not above what would normally be expected in her field. On appeal, the Petitioner acknowledges the Director's determination that the Petitioner's qualifications are possessed by most members in her field, but claims that they are nonetheless evidence of her exceptional ability. Notably, the Petitioner does not explain *why* these credentials establish her exceptional ability. And the Petitioner asserts that the Director erred in concluding the letters from her former colleagues and others in the field do not establish she has expertise significantly above others in her field. But, as discussed, the letters are not persuasive in establishing her contributions to the field. And we also agree that the letters, while complimentary to her skillset and career, do not establish she has a degree of expertise significantly above that ordinarily encountered in the field.

The record does not establish the Petitioner's eligibility as an individual of exceptional ability as it does not demonstrate that she meets three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) or 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).[8]

C. 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 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.

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