U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34433680

Date: DEC. 03, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a foreign legal 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established eligibility for the underlying EB-2 immigrant classification and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 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.

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,[1] grant a national interest waiver if the petitioner demonstrates that:

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

- 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

In February 2022, the Petitioner filed the underlying national interest waiver. The Director denied the petition after issuing a request for evidence and reviewing the Petitioner's response, determining that the Petitioner had not established her eligibility for the underlying EB-2 visa classification as either an advanced degree professional or as an individual of exceptional ability. The Director further determined the Petitioner had not demonstrated she merits a discretionary waiver of the job offer requirement "in the national interest." On appeal, the Petitioner submits a brief.

Based on our de novo review of the record, we agree with the Director that the Petitioner has not established her eligibility for EB-2 visa classification. Because the national interest waiver cannot be approved unless the Petitioner qualifies for the underlying EB-2 classification, we reserve the Petitioner's arguments regarding the Director's determination that she also did not establish eligibility for a national interest waiver under the three prongs of the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 alternative issues on appeal where an applicant is otherwise ineligible).

A. EB-2 Visa Classification as an Advanced Degree Professional

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.

The Director acknowledged the Petitioner's documents evidencing she was awarded a master's degree in September 2022 from the [redacted] in Italy in European studies after completing a two-year program. However, the Director determined that the degree was awarded after the Petitioner filed her national interest waiver and she therefore did not demonstrate she had a foreign degree equivalent to a U.S. academic or professional degree above that of a baccalaureate at the time of filing her national interest waiver as required.

The Director also determined that the Petitioner's degree in international law, awarded in 2016 after she completed a four-year program at [redacted] was equivalent to a United States baccalaureate degree. However, the Director further determined the Petitioner had not established she had at least five years of progressive post-baccalaureate experience. According to the Director, the Petitioner submitted a letter evidencing that she worked as a junior lawyer from September 2015 until October 2018.

However, she acquired her degree in June 2016. The Director therefore determined that the Petitioner's experience from June 2016 to October 2018 did not amount to five years of progressive experience in the specialty following the acquisition of her foreign equivalent of a U.S. baccalaureate degree. The Director also determined that another letter submitted by the Petitioner evidenced she worked as a full-time legal assistant starting in December 2022, after she filed her national interest waiver in February 2022.

The Petitioner asserts the Director erred in determining she was not an advanced degree professional but does not explain how the Director erred; rather she references having submitted her degrees from the [redacted] and the [redacted] in the record below.

The Petitioner must establish her eligibility for the national interest waiver at the time of filing. 8 C.F.R. § 103.2(b)(1). While the Petitioner submitted evidence of obtaining a master's degree, the degree was awarded after she filed her national interest waiver. The Petitioner therefore has not demonstrated she had a foreign degree equivalent to a U.S. academic or professional degree above that of a baccalaureate at the time of filing her national interest waiver. Similarly, while the Petitioner submitted evidence of obtaining a foreign degree equivalent to a U.S. bachelor's degree, she did not establish that at the time of filing she had at least five years of progressive experience in the specialty. Consequently, the Petitioner has not established that at the time of filing she was an advanced degree professional as required under 8 C.F.R. § 204.5(k)(2).

B. EB-2 Classification as an Individual of Exceptional Ability

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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] 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.

The Director determined the Petitioner only met one of the six regulatory criteria, namely 8 C.F.R. § 204.5(k)(3)(ii)(A), and therefore did not establish the first step of the exceptional ability analysis. For this reason, the Director did not conduct a final merits analysis. On appeal, the Petitioner asserts the Director erred in determining she did not provide evidence demonstrating membership in professional associations under 8 C.F.R. § 204.5(k)(3)(ii)(E) or evidence demonstrating recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations under 8 C.F.R. § 204.5(k)(3)(ii)(F).

[2] 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). Here, the Petitioner has not submitted comparable evidence to establish her eligibility.

[3] USCIS has confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally, 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual (explaining, as guidance, how to evaluate evidence in the exceptional ability context).

We agree with the Director that the Petitioner established she has a degree, diploma, certificate, or similar award from an institute of learning relating to the area of exceptional ability, satisfying 8 C.F.R. § 204.5(k)(3)(ii)(F). With respect to 8 C.F.R. § 204.5(k)(3)(ii)(E), the Petitioner asserts she is a member of the National Association of Legal Assistants (NALA), whose membership encompasses a diverse range of individuals, from experienced paralegal experts to students currently enrolled in accredited paralegal studies. She also states she is a member of the National Federation of Paralegal Associations, Inc. (NFPA), which is comprised of almost 40 member associations and represents over 4,000 individual members reflecting a broad range of experience, education, and diversity. She provides her membership certificate for both and information from the website of NFPA. The term "profession" is defined as one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), 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.[4] 8 C.F.R. § 204.5(k)(2). The Petitioner does not assert and the documentation in the record does not demonstrate that a U.S. bachelor's degree or foreign equivalent is a requirement for membership in either NALA or NFPA. The Petitioner also claims she is a member of the American Bar Association (ABA) and American Immigration Lawyers Association (AILA). The record does not contain evidence of the Petitioner's membership in the ABA. Further, the printouts the Petitioner includes to evidence her membership in AILA states she is ineligible for membership and her "type" is student. The Petitioner has therefore not established her membership in professional associations to satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

With respect to 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires evidence demonstrating recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, the Director acknowledged the Petitioner's letters of recommendation and her certificates recognizing her grade school achievements, community service, and completion of educational events. The Director however determined that the Petitioner's evidence did not establish this criterion. The Petitioner does not provide arguments for how the Director erred in the analysis. Rather, she refers to three of the letters of recommendation submitted to the Director below that she asserts support this criterion. One letter is authored by an attorney who supervised her internship with his law firm, but the author does not describe the length of the internship. He describes how the Petitioner assisted with filings and improved the "company's statistics" for the Central Asian region. He, however, does not explain or provide context what he meant by the company's statistics. A second letter is authored by a managing partner at another employer, who praises her work for the firm as an intern and then paralegal and says he is very satisfied with her work. A third letter is by another attorney for the same employer who praises her language skills and her ability to learn quickly. While the letters are highly complimentary of the Petitioner, they do not detail how the Petitioner's contributions to their employer's practices or successfully fulfilling her duties amount to significant contributions to the broader legal industry or field as required by the plain language of 8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal, the Petitioner does not contest the Director's findings with respect to the remaining three evidentiary criteria. Accordingly, the Petitioner has not established three out of the six evidentiary

[4] 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.

criteria of 8 C.F.R. § 204.5(k)(3)(ii) to satisfy step one of the analysis for EB-2 classification as an individual of exceptional ability. We therefore need not conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is 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, under section 203(b)(2)(A) of the Act and reserve the Petitioner's arguments in support. See INS v. Bagamasbad, 429 U.S. at 25-26; see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The Petitioner has not established that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. Therefore, the Petitioner has not shown eligibility for the underlying EB-2 classification. Without such a showing, the Petitioner cannot qualify for the national interest waiver of the job offer attached to that classification.

ORDER: The appeal is dismissed.