U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28809827

Date: FEB. 08, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmaceutical professional, seeks employment-based second preference (EB-2) classification, as well as a national interest waiver of the job offer requirement attached to this classification. 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 record did not establish that the Petitioner qualifies for the EB-2 exceptional ability visa classification or that a waiver of the job offer requirement 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business.

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). For this classification, 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. If a petitioner does so, we then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[2]

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

Because the EB-2 classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that the petitioner merits 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.

II. ANALYSIS

A. Classification as an Individual of Exceptional Ability

The first issue on appeal is whether the Petitioner is eligible for the EB-2 visa classification as an individual of exceptional ability in the sciences.[4] The Petitioner claimed that she qualifies by meeting the following evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii):

- (A), an official academic record showing that the Petitioner has a degree, diploma, or similar award from an institution of learning related to her area of exceptional ability;
- (C), a license to practice the profession or certification for a particular profession or occupation; and
- (E), membership in professional associations.

The Director concluded that the Petitioner met the criteria regarding education and licensure, but did not provide evidence establishing her membership in a professional association. Because the Petitioner had not met at least three of the initial criteria, the Director found her ineligible for the exceptional ability classification without proceeding to a final merits determination.

On appeal, the Petitioner states that the Director misapplied the law and reiterates her claim that by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), she qualifies as an individual of exceptional ability. Upon review, the record does not meet three of the criteria, for the reasons below.

[3] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] The Petitioner does not claim, and the record does not indicate, that she qualifies for the EB-2 classification as an advanced degree professional. 8 C.F.R. § 204.5(k)(2), (3)(i).

(A) An official academic record showing that the individual has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

To establish eligibility for this criterion, the Petitioner submitted the following credentials, along with certified English-language translations:

- Bachalera em Farmácia, [redacted] (2017)
- Certificade de Especialização, [redacted] (2018).

She also submitted an academic transcript for the Especialização, as well as educational equivalency evaluations for both credentials. Based on this documentation, we conclude that the Petitioner has met this criterion by showing that she received a degree, certificate, or similar credential in her field of pharmacy from an educational institution.

(C) A license to practice the profession or certification for a particular profession or occupation

For this criterion, the Petitioner submitted a Certidão de Regularidade Técnica Profissional issued by the [redacted] along with a certified English-language translation that states in relevant part:

> We certify, for the necessary purposes, that the Pharmaceutical [Petitioner]. . . is regularly registered with this Corporate Authority . . . since 11/09/2020, currently on a definitive basis . . .
> . . .
>
> There is no professional impediment or accusation in an ethical process.
> . . .
>
> This Certificate does not replace the Notation of Pharmaceutical Professional Activity (AAPF) and is valid for 30 (thirty) days from the date of issue.

As this is a certification to practice the Petitioner's occupation as a pharmacist in Brazil, we conclude that it meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

(E) Membership in Professional Associations

The Petitioner sought to use her [redacted] certificate to establish her eligibility under this criterion. The Director concluded that the evidence provided did not show that the [redacted] is comprised of individuals who have earned at least a U.S. baccalaureate degree or its foreign equivalent or that it is a nonprofit organization, and that [redacted] is therefore not a qualifying professional association under 8 C.F.R. § 204.5(k)(3)(ii)(E).

On appeal, the Petitioner correctly notes that there is no requirement for professional associations under this criterion to be nonprofit organizations. However, the evidence provided is insufficient to establish that [redacted] is a professional association or that the Petitioner is a member of it.

The Petitioner's appellate letter, quoting an unspecified source, states:

> A professional association is a term used to describe a business that serves a single profession and requires a significant amount of education, training, or experience or a license or certificate from a state or private authority to practice the profession. It is an organization whose members belong to a particular profession that sets requirements for entry into and maintaining membership in that profession.

However, the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The record does not establish that [redacted] is an association of professionals as defined in the regulations.

The only documentation submitted regarding [redacted] is a partially illegible and uncertified translation of the organization's website. Any foreign-language evidence submitted to USCIS must be accompanied by a full English-language translation, along with a certification from the translator that the translation is complete and accurate and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Here, the Petitioner did not submit the original foreign-language website, and the provided translation was not accompanied by the required certification. Because we cannot determine whether this translation corresponds to the original document or supports the Petitioner's claims, we will not grant it evidentiary weight. *Id.*

Furthermore, even if we were to accept this website printout, which we do not, it does not establish eligibility for this criterion because it does not explain [redacted] membership requirements, if any, or state that the certificates like the Petitioner's are granted to such members. The legible part of the printout, titled "Who we are," states:

> . . . institutional mission of ensuring the ethics and discipline of professional practice, through the performance of the supervisory police power in compliance with legal precepts, resolving and deliberative ones advocated by professional and health authorities.
>
> Thus, the Regional council of Pharmacy of the Federal District pays close attention to the quality and effectiveness of activities and pharmaceutical care provided by legally qualified pharmacists within the scope of the Federal District, emphasizing the relevance of their technical and social role in the context of Public Health, for the benefit of promotion, prevention, and recovery of health and improvement of life of users of health products.

This appears to indicate that [redacted] is a government body that polices the pharmaceutical profession in Brazil according to standards "advocated by professional and health authorities." There is no indication in this document that [redacted] is an association with memberships that are restricted to

members of the professions as defined at 8 C.F.R. § 204.5(k)(2), or that being registered with [redacted] constitutes such a membership. While various attorney letters in the record assert that [redacted] is a professional association, counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The evidence provided is insufficient to show that the Petitioner is a member of a professional association. She has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Because the Petitioner has not met at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), she does not qualify as an individual of exceptional ability. We therefore do not need to conduct a final merits determination to decide whether the totality of the evidence establishes her exceptional ability and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

We note, however, that the Petitioner's contention that meeting three of the criteria would render her qualified for the EB-2 classification is incorrect. To be eligible, a petitioner must show that their level of expertise is significantly above that ordinarily encountered in their field, and that this expertise will prospectively provide a substantial benefit to the national economy, cultural or educational interests, or welfare of the United States. 8 C.F.R. § 204.5(k)(2); section 203(b)(2)(A) of the Act. Simply having the qualifications to practice one's occupation, such an academic degree or license, does not suffice to establish that one has exceptional ability. Section 203(b)(2)(C) of the Act.

B. National Importance of the Petitioner's Endeavor

The second issue on appeal is whether the Petitioner is eligible for a waiver of the job offer requirement in the exercise of discretion, using the three-prong test outlined in *Matter of Dhanasar*, 26 I&N Dec. 884. The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. For example, an endeavor may qualify if it has national implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.*

In this instance, the Director concluded that while the Petitioner's endeavor has substantial merit, she did not describe or document it with sufficient specificity to establish what impact it would have, or how that impact would rise to the level of national importance. On appeal, the Petitioner contends that the Director applied an overly strict standard of proof when examining her evidence. Upon review, she has not overcome this denial ground.

While the Petitioner relies on the general importance of pharmacy and healthcare as industries to establish the importance of her endeavor, when determining whether a proposed endeavor will have national importance, the relevant question is not the importance of the industry or profession where a noncitizen will work, but the specific impact that will be attributable to the proposed endeavor. *Id.* Because Petitioner has not provided sufficient information to establish what her endeavor will be, its impact cannot be assessed.

In her initial filing, the Petitioner stated she would work in the pharmaceutical field in some capacity other than as a pharmacist, and provided materials listing various jobs a worker with an education in pharmacy could qualify for, including medical and health services manager, laboratory technician, clinical research coordinator, pharmaceutical sales representative, clinical research scientist, and several others, many of which have very different duties and prerequisites. In response to the Director's request for evidence, she stated that she would work as an infection prevention and control specialist, providing general documentation about this occupation and about the field of pharmaceutical research and development. As noted by the Director, it was not apparent from this information what actual work the Petitioner will perform.

The Petitioner asserts on appeal that "infectious disease is a subfield of Pharmacy," and so all of the work referred to in her materials is related and constitutes an endeavor. We disagree. "The term 'endeavor' is more specific than the general occupation; a petitioner should offer details not only as to what the occupation normally involves, but what types of work the person proposes to undertake specifically within that occupation." 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1). Even if we were to limit ourselves to the Petitioner's information regarding the occupation of infection prevention and control specialist, she has only provided general documentation indicating that such workers are employed in differing capacities in public health agencies, hospitals, care homes, and private industry. None of the documentation provided specifies what kind of work the Petitioner intends to perform within this occupation.

The Petitioner emphasizes the importance of infectious disease control and the shortage of qualified workers in the field, but does not indicate how her work as an individual infections disease prevention and control specialist would alleviate this shortage on a national level or otherwise have any effect beyond her workplace.[5] In *Dhanasar*, the noncitizen's teaching activities in science, technology, engineering, and math (STEM) disciplines were found to have substantial merit, but did not qualify him under the first prong because the evidence did not show how that work would impact the field of STEM education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the Petitioner here has not shown that her work would have the kind of broader implications contemplated by *Dhanasar* in determining national importance. *Id.* at 889.

The record does not indicate that the Petitioner's endeavor would be nationally important. Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those issues. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (BIA 2015).

[5] We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that workers in that occupation should receive a waiver of the job offer requirement. *See Matter of Dhanasar*, 26 I&N Dec. at 885, *see also* 20 C.F.R. § 656.1.

III. CONCLUSION

The Petitioner has not shown that she qualifies for the EB-2 visa classification as an individual of exceptional ability in the sciences. She also has not met the requisite first prong of the *Dhanasar* analytical framework, and so has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The petition will remain denied.

ORDER: The appeal is dismissed.