U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35854666

Date: FEB. 25, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an architect, 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 petition, concluding the record did not establish the Petitioner's eligibility for EB-2 immigrant classification or the requested national interest waiver. The Petitioner subsequently filed a motion to reconsider, which the Director dismissed. 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 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

[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).

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

As a preliminary matter, we emphasize that the appeal before us relates to the Director's September 2024 dismissal of the Petitioner's motion to reconsider, not the May 2024 denial of the underlying petition.[3] Therefore, the sole question before us on appeal is whether the Director erred in dismissing the motion to reconsider.

On appeal, the Petitioner asserts that the Director's dismissal of her motion lacked detailed analysis and did not appropriately weigh the legal arguments and factual corrections identified in the motion. In particular, she argues that the Director did not properly evaluate the evidence showing she meets the EB-2 immigrant classification as an advanced degree professional or as an individual of exceptional ability.[4]

Upon review, we conclude the Director's dismissal of the motion was correct. A motion to reconsider must establish that the prior decision was based on an incorrect application of law or policy and that the

[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] The Petitioner's Form I-290B, Notice of Appeal or Motion, reflects she filed only a motion to reconsider before the Director, not a combined motion to reopen and reconsider as claimed in her appeal.

[4] The Petitioner submits additional evidence on appeal in support of her argument that she meets the requirements for an individual of exceptional ability and is well positioned to advance her proposed endeavor. She presents documents including letters from prospective and past clients, letters from past employers and a professor, a contract for her services, and a membership certificate for the Young Architects Association of Uzbekistan. However, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider them for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Additionally, while we note that some of the documents submitted do post-date the Director's denial, a petitioner must establish eligibility for a requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12).

decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

In her motion to reconsider, the Petitioner primarily argued that the Director overlooked and did not properly assess the evidence, which she claimed demonstrated her eligibility for a national interest waiver. However, the Director properly found that the Petitioner had not overcome the basis for denial or otherwise established the denial of her petition was based on an incorrect application of law or policy. The Director noted that the evidence of record had been reviewed and precedent decisions correctly applied, but that the evidence did not show the Petitioner was an advanced degree professional or individual of exceptional ability, and that she merited a national interest waiver as a matter of discretion. We agree with the Director that the evidence is insufficient to establish the Petitioner's eligibility for a national interest waiver and her appellate arguments do not persuade us that the Director erred in dismissing the motion.

Even if we were to consider the Petitioner's claims of eligibility on the merits, we would still agree with the Director that the Petitioner has not shown she qualifies for a national interest waiver. As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification. Section 203(b)(2)(A) of the Act. Here, the Director correctly found that the evidence was insufficient to show that the Petitioner satisfies this threshold requirement.

With regard to qualification as an advanced degree professional, the evidence does not establish that the Petitioner possesses an advanced degree or has attained five years of post-baccalaureate experience in the specialty. To demonstrate five years of post-baccalaureate experience, a petitioner must provide "evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The letters must also include "a specific description of the duties performed by the alien." 8 C.F.R. § 204.5(g)(1).

Contrary to her assertion on appeal, the Director acknowledged the Petitioner attained the foreign degree equivalent of a U.S. bachelor's degree in architecture based on her academic records and diploma evaluation report. However, the Director concluded the evidence was insufficient to show the Petitioner possessed the requisite years of work experience. Although the Petitioner provided an employment letter reflecting she worked as an architect at the [redacted] from the years 2019 to 2021, the letter does not provide specific dates of employment and a specific description of duties performed by the Petitioner. Additionally, while her updated resume claims she was employed at the [redacted] as an architect from January to July 2019 and that she engaged in freelance architect work from 2021 to the present, she has not corroborated these statements with evidence.[5] The Petitioner must support her claims with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Additionally, we observe that, even if the Petitioner had submitted sufficient evidence to support her claims, she still would have less than five years of post-baccalaureate experience between her alleged

[5] We observe that the version of the Petitioner's resume submitted with her initial filing did not include information on her work as a freelance architect. Additionally, while she submitted an employment letter from [redacted] on appeal, it does not identify the Petitioner's specific dates of employment.

employment beginning in January 2019 and the filing date of her petition in March 2023.[6] 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for the requested benefit at the time of filing). Accordingly, the Director correctly concluded that the evidence does not demonstrate the Petitioner is an advanced degree professional.

The Director also properly concluded that the evidence does not establish the Petitioner satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) to show she is an individual of exceptional ability. The Director determined the Petitioner fulfilled only the official academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).[7]

The Petitioner argues that she also meets the criterion requiring at least ten years of full-time experience in the occupation and evidence of recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (F). However, contrary to her argument on appeal, the letters written by [redacted] do not list the specific dates of employment or specify whether the Petitioner's employment was full-time to show that she has the requisite experience. Moreover, as noted above, we again observe that, even if the Petitioner had submitted sufficient evidence to support her work experience at these companies, the length of time she was employed would still be less than ten years of full-time experience in the occupation. The letters are, therefore, not sufficient to overcome the Director's concerns.

The Petitioner also did not submit sufficient evidence of her recognition for achievements and significant contributions to the industry or field as described at 8 C.F.R. § 204.5(k)(3)(ii)(F). On appeal, the Petitioner again points to letters written by [redacted] which discuss the Petitioner's ability, skills, attributes, and personal accomplishments. She also asserts that the expert opinion letter, her Certificate of Honor by [redacted] and Certificate of Completion by the [redacted] acknowledge her "outstanding academic performance," commitment to professional development, recognition within the industry, and contributions to the field.

While the expert opinion and recommendation letters discuss the Petitioner's skills, personal attributes, and personal accomplishments, they do not explain or elaborate how her work has had an impact beyond her employers, clientele, and their projects at a level indicative of achievements and significant contributions to the industry or field. Similarly, while the certificates demonstrate the Petitioner's dedication to her work while a student and her steps taken towards professional development, these documents do not show that her work has been significant to the industry or field. Accordingly, we agree with the Director that the Petitioner has not established she fulfills this criterion.

As the Petitioner has not shown that she satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii), she has not shown that she is an individual of exceptional ability. Because the Petitioner

[6] While the Petitioner also points to letters from potential clients to "further substantiate the demand for [the Petitioner's] expertise and reflect her ongoing professional development," these letters were also written after the Petitioner filed her petition and their prospective nature cannot count towards five years of post-baccalaureate experience.

[7] The Petitioner has not contested the Director's determination that she has not met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C), (D), and (E) for licensure, salary, and membership. Therefore, we consider the issue of eligibility under these criteria to be waived. *See, e.g.*, *Matter of F-C-S-*, 28 I&N Dec. 788, 792 n.6 (BIA 2024) (finding that issues not challenged on appeal are waived).

did not establish the threshold requirement of eligibility for the EB-2 classification, she would not qualify for a national interest waiver.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not shown that the Director erred in dismissing the motion to reconsider.

ORDER: The appeal is dismissed.