U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-A-Y-

DATE: FEB. 28, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business development manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not established that a waiver of the required job offer, and thus the labor certification, would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in three motion adjudications.[1] Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The matter is now before us on a fourth motion to reopen. We will deny the motion.

I. LAW

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

[1] *Matter of T-A-Y-*, ID# 17466 (AAO July 29, 2016) was our most recent decision in this matter.

> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Since its publication in 1998, under the legacy Immigration and Naturalization Service, we have adhered to a precedent decision establishing a framework for evaluating national interest waiver petitions. *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*). Recently, in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), we vacated *NYSDOT* and set forth a new framework for adjudicating national interest waiver petitions. *Dhanasar* clarifies that, after eligibility as an advanced degree professional or individual of exceptional ability has been established, USCIS may grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. If these three elements are satisfied, USCIS may approve the national interest waiver as a matter of discretion.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

On motion, the Petitioner maintains that her master of public administration degree from [redacted] in [redacted] is a qualifying advanced degree. With the current motion, the Petitioner submits a webpage from the [redacted] listing [redacted] as one of the "Major Universities in [redacted] In addition, she provides a webpage from [redacted] indicating that its [redacted] offers an "alternative to the executive MBA" (master of business administration). The Petitioner contends that she "would not have been accepted in [redacted] without advanced degree and the school through their [*sic*] respected channels found [her] diploma officially recognized in the U.S."

To qualify as a member of the professions holding an advanced degree, the Petitioner must show that her occupation meets the definition of a profession, and that she holds a qualifying advanced degree. Section 101(a)(32) of the Act does not include business development managers in the list of professions, and the Petitioner has not established that a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Furthermore, although

the Petitioner has documented her master of public administration degree from she has not submitted an academic credential evaluation to establish its equivalency to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A). We therefore affirm our previous finding that the Petitioner has not established her eligibility as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner contends that she satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). As discussed below, our review of the documentation provided on motion does not show that the Petitioner meets at least three of the relevant evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii).

In our appellate decision dated July 2, 2014, we determined that the Petitioner's degrees from satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." With respect to the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) – (E), the Petitioner's motion does not include new evidence to overcome our findings that she offered insufficient documentation to meet those additional criteria.

The regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." On motion, the Petitioner submits presentation slides from her " an agenda listing her as a speaker at (2015),[2] and two additional reference letters prepared in support of the petition.

The reference letters from professor at and a monitor and evaluator of "policy documents on anticorruption measures" for the discussed the Petitioner's training and consultancy projects.[3] The aforementioned reference letters, the Petitioner's ' presentation slides, and her speaking engagement at are insufficient to document that she has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Therefore, the Petitioner has not overcome our finding that she does not meet the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). Accordingly, the new evidence offered on motion does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

[2] We note that the Petitioner gave her presentation at after the filing date of the petition on December 17, 2012. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

[3] letter was unsigned and thus of limited evidentiary value.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As explained in our prior decisions, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. As the Petitioner has not established eligibility for the underlying immigrant classification, we need not consider whether she is eligible for a national interest waiver under the framework set forth in *Dhanasar*.

III. CONCLUSION

The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability. As the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision, the motion is denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-A-Y-*, ID# 350645 (AAO Feb. 28, 2017)