U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28802764

Date: JAN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the beauty industry, seeks classification as an individual of exceptional ability. 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 attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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 of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's qualification for the EB-2 classification or eligibility for a national interest waiver. 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 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). An individual 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does demonstrate meeting at least three criteria, USCIS then conducts a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Director found that the Petitioner did not establish that she is an individual of exceptional ability, and as such did not establish that she qualifies for the EB-2 classification.[3] The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* framework and therefore concluded that she is not eligible for a national interest waiver.

The Petitioner's proposed endeavor is to establish and operate hair salons in [redacted], Florida and in [redacted], New York. On appeal, the Petitioner submits a brief in which she asserts that she has established her eligibility for a national interest waiver. While we do not discuss each piece of evidence in the record, we have reviewed and considered each one.

A. Qualification for the EB-2 Classification

As stated above, the Petitioner asserts that she qualifies for the EB-2 classification as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2). The Director concluded that the Petitioner established only the initial criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) (possessing at least ten years of full-time experience in the occupation) and 8 C.F.R. § 204.5(k)(3)(ii)(C) (possessing a license to practice the profession). On appeal, the Petitioner claims she has established that she meets all six of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). We examine each of the regulatory criteria in turn.

> *An official academic record showing that the alien 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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner submitted certificates of completion for training courses in hairdressing, aesthetics, and makeup, including a hairdresser course certificate from [redacted] in Brazil and hairdresser, makeup, and aesthetics course certificates from [redacted], also in Brazil. The Petitioner also submitted various other workshop and continuing education certificates related to

[2] *See also 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).

[3] The Petitioner does not claim to qualify for the EB-2 classification as an advanced degree professional.

hairdressing. However, the Director concluded that the evidence was insufficient to meet this criterion because, although the trainings relate to the Petitioner's occupational field, the record did not show that they were received from a "qualifying institution of learning." Additionally, the Director noted that the Petitioner submitted no evidence of education related to entrepreneurialism.

On appeal, the Petitioner summarizes the evidence in the record and the Director's finding. However, the Petitioner does not explain how the record establishes that the trainings were received from institutions of learning, nor does she claim that the Director has made any erroneous conclusions of law or statements of fact relating to this criterion. Although we exercise de novo review, the Petitioner bears the burden to establish eligibility for the benefit and to establish error with the Director's conclusions. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; *see also* 8 C.F.R. § 103.3(a)(1)(v). Without an explanation as to what, if any, conclusions of law or statements of fact the Petitioner contends are incorrect as to this criterion, we conclude that the Petitioner has not overcome the Director's finding on appeal.

As such, the Petitioner has not established this criterion.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner submitted a letter from a former employer documenting less than nine years of employment as a hairdressing assistant, technician, and then hairdresser, from July 1999 to March 2008. The Petitioner also submitted evidence of owning a hair salon and support letters from business partners and colleagues who describe their experience working with the Petitioner. The Director concluded that this criterion was met. Considering the evidence in the record in its totality, we agree that the Petitioner has established this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

In support of this criterion, the Petitioner submitted evidence of her cosmetology license, issued by the Board of Cosmetology for the State of Florida Department of Business and Professional Regulation. The Director concluded that this criterion was met, and we agree that the Petitioner has established this criterion.

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

The Petitioner submitted a letter from her accountant stating that the Petitioner is the owner of [redacted] located in Brazil. The letter also states that the Petitioner received between $104,643.45 and $168,730.44 USD annually in 2013, 2014, and 2015 for her work at this company. The Director noted that the evidence did not demonstrate the Petitioner's earnings "relative to others in [the] field during the same time period" and therefore the evidence did not establish this criterion.

On appeal, the Petitioner states that this evidence should be sufficient to establish this criterion because, "[i]n the United States, a salon owner typically makes $68,436 annually." However, the Petitioner did not provide documentary evidence to support this claim.[4] Additionally, the Petitioner did not provide evidence as to the typical salary of a salon owner either in Brazil in general or in the Petitioner's specific region of Brazil. The Petitioner also did not explain or otherwise demonstrate how the average salary of a salon owner in the United States compares to the salary of a salon owner in Brazil. Moreover, even were we to conclude that the Petitioner had documented the typical salary range for a salon owner in Brazil—which we do not—the accountant letter is not sufficiently clear to establish that the amounts stated in the letter reflect the amount of the Petitioner's personal earnings, rather than those of the business.

As such, the Petitioner has not established this criterion.

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

The Petitioner submitted a certificate evidencing her membership in the "Professional Beauty Association" since 2016. The Director concluded that the Petitioner did not establish this criterion because the Petitioner did not provide evidence that the association is professional or the requirements for membership.

On appeal, the Petitioner states that cosmetology schools, freelancers, salons, and spas are associated with the organization and that the goal of the organization is to "focus on continuing education regarding services and business." Although the Petitioner makes these additional statements about the association on appeal, she again does not provide documentary evidence in support of these assertions. Additionally, the Petitioner does not explain how the Director erred in concluding that this criterion was not met. Moreover, the Petitioner still has not established the requirements for membership in the association. Based upon the lack of documentary evidence in the record regarding the nature of the organization or its requirements for membership, we conclude that the Petitioner has not established that she is a member of a professional association.

As such, the Petitioner has not established this criterion.

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 support of this criterion, the Petitioner submitted an article stating that she received an award for winning a contest in Brazil in the area of "capillary colorimetrist." The Petitioner also submitted an article from [redacted] magazine from 2015 stating the Petitioner is noteworthy as a hairstylist. The Petitioner also submitted support letters, including two from pharmaceutical and cosmetology companies that describe receiving help from the Petitioner to test their product lines and one from a

[4] The Petitioner provided a cite to a URL in support of the typical salon owner salary. However, the Petitioner did not provide a copy of the website that would explain the basis for this claim and that would help us determine its veracity and credibility. This is insufficient, as *Matter of Chawathe* contemplates that a petitioner submits "relevant, probative, and credible evidence" in support of their claims. *Matter of Chawathe*, 25 I&N Dec. at 376.

manager of a television station in Brazil, stating that she was selected to provide services for the TV presenters, guest artists, and news reporters.

The Director concluded that the Petitioner did not establish this criterion, finding that the evidence was insufficient to establish recognition for achievements and significant contributions to the industry or field. The Director also noted that the Petitioner did not submit evidence of recognition regarding her skill as an entrepreneur and that the support letters, while not without weight, could not serve as the sole basis for establishing this criterion.

On appeal, the Petitioner contests these findings. The Petitioner asserts that the evidence relates to her experience in the beauty industry and, because she is an entrepreneur in that industry, the evidence relates sufficiently to the proposed endeavor. The Petitioner also asserts that the support letters, in combination with the evidence of ownership of her salon and the award received, should establish this criterion.

We agree that evidence, if provided, of recognition for achievements and significant contributions to the beauty or hair care industry would qualify as the relevant "industry or field" given the Petitioner's proposed endeavor, and we withdraw the Director's finding inasmuch as it relies on concluding that the Petitioner must establish recognition specifically related to "entrepreneurship." However, we nevertheless agree with the Director that the Petitioner has not established this criterion. Although the Petitioner submitted evidence of receiving a single award that appears to relate to her industry, the Petitioner did not submit evidence to establish the significance of this award, information about the pool of contestants for this award, or how this award is judged and selected. Without such evidence, we are unable to determine whether this award constitutes recognition for an achievement or significant contribution to the industry. Additionally, we agree with the Director that the support letters, although they speak highly of the Petitioner's skills and of the writers' positive experiences working with the Petitioner, similarly do not establish that the Petitioner has been recognized for achievements or significant contributions to the industry.

As such, the Petitioner has not established this criterion.

Therefore, the Petitioner has established that she satisfies only two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination to evaluate whether she has achieved the degree of expertise in the field required for exceptional ability classification. As such, the Petitioner does not qualify as an individual of exceptional ability. Having determined that the Petitioner does not qualify as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that she meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether she is eligible for, and merits as a matter of discretion, a national interest waiver. *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 is otherwise ineligible). We acknowledge the Petitioner's arguments on appeal as to her eligibility for a national interest waiver under the *Dhanasar* framework but, having found that the evidence does not establish the Petitioner's eligibility for the underlying EB-2 classification, we reserve our opinion regarding whether the record establishes any of the *Dhanasar* prongs.

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(3). Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a national interest waiver. We reserve our opinion regarding whether the Petitioner has satisfied any of the three prongs of the *Dhanasar* analytical framework.

ORDER: The appeal is dismissed.