U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35252092

Date: JAN. 14, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as 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 Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for the requested EB-2 classification and for a waiver of the required job offer, and thus of the labor certification. 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.* [If a doctoral degree is customarily required for the specialty, the non-citizen must possess a U.S. doctorate or a foreign equivalent 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:

> (A) An official academic record showing that the [noncitizen] 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;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought;

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

(D) Evidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

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 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,[1] 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

[1] *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).

The Petitioner proposes to work in the United States as an entrepreneur. The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she qualified as an individual of exceptional ability.

The Director determined that although the Petitioner met at least three out of six criteria—the Petitioner has not established that she possesses a degree of expertise significantly above that ordinarily encountered as an entrepreneur in the field of agriculture. On appeal, the Petitioner argues that the Director erroneously denied the petition. The Petitioner further contends that the Director failed to apply the proper standard of proof and instead imposed a novel standard.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Edwards v. U.S. Att'y Gen.*, 97 F.4th 725, 734 (11th Cir. 2024) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

A. Individual of Exceptional Ability

With respect to the underlying EB-2 classification, the Petitioner does not claim eligibility for classification as a member of the professions holding an advanced degree. Instead, she claims to be eligible as an individual of exceptional ability in the sciences, arts, or business. The Petitioner identifies herself as an entrepreneur in the field of agriculture with "exceptional ability and a degree of expertise significantly encountered in the rural management of soybean production." On appeal, the Petitioner contends that she has achieved significant recognition due to her strong professional background. The Petitioner explains that her track record of achievements and consistent contributions demonstrate that she is a professional of exceptional ability. She also argues that the documents she submitted, along with "her fulfillment of various eligibility criteria and her notable contributions to agricultural management and sustainability initiatives," establish her as a professional with expertise "significantly beyond the ordinary in the agricultural sector."

In denying the Petition, although the Director recognized that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E), the Director concluded that the evidence submitted does not establish that the Petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to her field. Additionally, the Director determined that there is insufficient evidence to show that the Petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. While the Petitioner provided numerous letters of recommendation praising her and her work, the Director found these letters inadequate to demonstrate significant contributions to her field.

Upon a final merits determination in reviewing the totality of the evidence, the Director determined that none of the Petitioner's evidence show that the Petitioner has exceptional ability as an entrepreneur in the agriculture field. The Director, therefore, determined that the Petitioner has not established that she possesses a degree of expertise significantly above that ordinarily encountered as

an entrepreneur in the field of agriculture. We agree. Here, the record as a whole does not establish the Petitioner's eligibility as an individual of exceptional ability.

Though we acknowledge the Petitioner's assertions, we nonetheless conclude that the Petitioner did not demonstrate how (1) her degree; (2) work experience; (3) certifications and license; and (4) membership in professional associations sets her apart from other entrepreneurs in the agriculture field to show a degree of expertise significantly above that ordinarily encountered in her field. For example, the Petitioner did not demonstrate how her record compares with other entrepreneurs with the same degree, experiences, certifications and licenses, and memberships. The Petitioner does not demonstrate that she possesses a degree of expertise significantly above that ordinarily encountered in her occupation or otherwise signify exceptional ability as an entrepreneur in the field of agriculture. Nor has the Petitioner demonstrated that her work has had an impact beyond her clients at a level indicative of achievements and significant contributions to the industry or field. Although the Petitioner has satisfied at least three of the initial categories of evidence, the record does not demonstrate that the Petitioner has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

B. National Interest Waiver

Because the Petitioner did not demonstrate eligibility for the underlying EB-2 visa classification, we decline to reach and hereby reserve the appellate arguments regarding the Petitioner's eligibility under the *Dhanasar* prongs and whether the Petitioner established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

As the Petitioner has not established eligibility for the underlying EB-2 classification, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.