U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37808437

Date: JUL. 11, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a pilot, 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).

SCOPS denied the petition, concluding the Petitioner did not establish her eligibility for the underlying EB-2 classification and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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, petitioners must establish they are advanced degree professionals or individuals of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. 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 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.

[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). The Petitioner has not submitted comparable evidence.

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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is a citizen of Panama who intends to work as a commercial pilot in the United States. SCOPS determined the Petitioner had not established her eligibility for the EB-2 classification because she did not claim she was an advanced degree professional and had not established she was an individual of exceptional ability in the sciences, arts, or business. According to SCOPS, the Petitioner satisfied the regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(E), but upon a final merits review, the evidence in its totality did not show that she is 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.

On the Form I-290B, Notice of Appeal or Motion, the Petitioner states that SCOPS erred in determining she was not an individual of exceptional ability in the sciences, arts, or business because she demonstrated more than three of the six eligibility criteria under 8 C.F.R. § 204.5(k)(3)(ii). However, as stated above, meeting at least three criteria, does not, in and of itself, establish eligibility for this classification. See generally 6 USCIS Policy Manual, supra, at F.5(B)(2) (providing guidance on the two-step exceptional ability evidentiary review process). The Petitioner also designated on the Form I-290B that she will submit a brief within 30 calendar days in support of the appeal. However, as of the date of this decision, we have not received a brief.

We agree that the Petitioner has an official academic record showing a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability, satisfying 8 C.F.R. § 204.5(k)(3)(ii)(A) and a license to practice the profession or certification for a particular profession or occupation, satisfying 8 C.F.R. § 204.5(k)(3)(ii)(C). However, we withdraw SCOPS' determination that the Petitioner demonstrated she has at least ten years of full-time experience in piloting, commanded a salary or other remuneration for services demonstrating exceptional ability, and has membership in professional associations, satisfying the regulatory requirements at 8 C.F.R. § 204.5(k)(3)(ii)(B), (D), and (E) respectively. We also agree with

[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).

SCOPS that the Petitioner has not provided sufficient evidence of recognition for achievements and significant contributions to the industry or field to satisfy 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner has not submitted evidence in the form of letters from current or former employers showing she has at least ten years of full-time experience in piloting to satisfy 8 C.F.R. § 204.5(k)(3)(ii)(B). According to 8 C.F.R. § 204.5(g)(1), evidence relating to qualifying experience or training shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the petitioner. The Petitioner provided a December 2024 letter from her employer, [redacted], claiming she worked for the company since May 2012 "to the date she holds the position of Chief Pilot and Captain Flight Operations." The letter does not provide what the Petitioner's roles were for the company prior to her obtaining her current title. Also, while the letter identifies her current responsibilities to include organizing, directing, coordinating the crew, communicating the needs of the department to management, and recommending to management modifications to manuals or regulations, it does not state if or when she performed piloting duties for the company and for how long she performed those duties. While we note the Petitioner provided some flight logs for years 2021-2023 and claims in her initial brief that she has over six thousand flight hours and over ten years of experience, this information is not contained in her employer's letter.

The Petitioner has not established she commanded a salary, or other remuneration for services demonstrating exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(D). The Petitioner included an August 2023 letter by her employer stating her monthly income is $5,400. She also included a salary report for a pilot in [redacted] Panama for all years of experience in all industries, which states the salary range is from two to five thousand dollars per month. However, the report does not distinguish salary by types of pilots and does not specify the salary for commercial pilots. The Petitioner has therefore not provided sufficient evidence of comparative salary or compensation data demonstrating her exceptional ability relative to others in the field.

The Petitioner has not provided evidence demonstrating her membership in professional associations under 8 C.F.R. § 204.5(k)(3)(ii)(E). The term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." In support of this criterion the Petitioner submitted an [redacted]" membership card and a membership letter from the [redacted] The record does not contain documents describing these associations or their requirements for membership. As a result, the Petitioner has not demonstrated that a U.S. bachelor's degree or foreign equivalent is a requirement for membership and that these are professional associations.

Further, the Petitioner has not provided sufficient evidence of her recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations to demonstrate exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(F). In support of this criterion, the Petitioner submitted recommendation letters from peers and instructors. Although the Petitioner asserted in the record below that her contributions to her employer's flight safety has impacted the aviation industry, her recommendation letters and other evidence do not demonstrate or support such contributions. We acknowledge that the letters are highly complementary, claiming, for example, the Petitioner is an outstanding pilot and model for young

women, her hard work amounted to her becoming a captain, and she passed her evaluations with high scores, but they do not describe her recognition for achievements and significant contributions to the industry.

Accordingly, the Petitioner has not established three out of the six evidentiary criteria of 8 C.F.R. § 204.5(k)(3)(ii) to satisfy step one of the exceptional ability analysis, and we therefore withdraw SCOPS' determination to the contrary. The Petitioner has therefore not established her eligibility for the underlying visa classification. However, because SCOPS determined the Petitioner did not meet exceptional ability after a final merits determination, we will also conduct a final merits review of the evidence.

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence. See generally 6 USCIS Policy Manual, supra, at. F.5(B)(2), (explaining, as guidance, how to evaluate evidence in the exceptional ability context). We agree with SCOPS that the relevant evidence, which includes the Petitioner's education, recommendation letters, training and experience, do not establish in totality that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Her license and training certificates, which satisfied 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C), are necessary to her being a pilot. Qualifications possessed by most members of her field do not demonstrate a degree of expertise significantly above that ordinarily encountered. See generally 6 USCIS Policy Manual, supra, at F.5(B)(2) (providing, as guidance, factors to consider in a final merits determination). Moreover, while the Petitioner asserted in the record below that her piloting certifications, experience, and expertise are advanced, she does not corroborate her statements with evidence demonstrating she has a degree of expertise significantly above that ordinarily encountered in her field. See generally 6 USCIS Policy Manual, supra, at. F.5(B)(2)(providing, as guidance, the petitioner must demonstrate that the beneficiary is above others in the field). After reviewing the totality of the evidence, we conclude that the Petitioner has not established she is 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.

As her eligibility for the underlying EB-2 classification is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. 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

The Petitioner has not established that she qualifies for the underlying EB-2 classification. Without such a showing, the Petitioner cannot qualify for the national interest waiver of the job offer attached to that classification.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.