U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31629265

Date: JULY 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a former police officer, 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 Texas Service Center denied the petition, concluding the Petitioner did not establish that she was an advanced degree professional or an individual of exceptional ability 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, 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.[2] 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.

II. ANALYSIS

In her autobiographical statement, the Petitioner described herself as a security and counterintelligence analyst and forensic science expert. In her business plan submitted in response to the Director's request for evidence (RFE), the Petitioner stated she would direct a securities company based in [redacted] New York which would provide top-tier digital forensic and cybersecurity consulting services to businesses in the United States.

A. Advanced Degree Professional

The Petitioner submitted a copy of her translated certificate and transcript from the [redacted] showing she was awarded the title of Police Administrator in 2014 and completed five semesters of coursework. The Petitioner also submitted an evaluation report from the Foundation for International Services, Incorporated which determined her title was equivalent to a United States associate's degree in criminal justice. The Director determined the Petitioner's title was not equivalent to a U.S. advanced degree.

On appeal, the Petitioner asserts she is an advanced degree professional and submits a new evaluation report from the Foundation for International Services, Incorporated. The new evaluation report determines the Petitioner's title is equivalent to a U.S. bachelor's degree in criminal justice administration. The new evaluation report lists the Petitioner's coursework but does not include an analysis of the Petitioner's academic record or an explanation of why the prior evaluation report of the same title determined it was equivalent to a U.S. associate's degree.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* Here, the new evaluation is of little weight because it does not explain how the Petitioner's five semesters of education are equivalent to a U.S. bachelor's degree. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244

[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).

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

(Reg'l Comm'r 1977). The new evaluation report does not explain how the Petitioner's two years of study are equivalent to the four years of education generally required for a U.S. bachelor's degree. Consequently, the Petitioner has not established that she holds the foreign equivalent of a U.S. bachelor's degree and is eligible for consideration as an advanced degree professional based upon such a degree and five years of progressive experience in the specialty, as specified in the regulation at 8 C.F.R. § 204.5(k)(2).

B. Individual of Exceptional Ability

To establish eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). If an individual meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual's field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

The Director determined the Petitioner did not meet at least three of the regulatory criteria to establish exceptional ability. On appeal, the Petitioner asserts that she meets the three following criteria. She does not claim to meet any other criteria.

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.

The Petitioner meets this criterion through her title of police administrator from the [redacted]

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.

The Director determined the Petitioner did not meet this criterion because she submitted evidence showing she had less than ten years of experience in her occupation. On appeal, the Petitioner asserts she meets this criterion and submits an additional support letter. The Petitioner initially submitted a letter from a lieutenant-colonel of the [redacted] stating that the Petitioner "was employed during 8 years, 4 months, and 12 days by the Police Intelligence Direction, serving in the position of Intelligence Analyst." The letter does not state the dates of the Petitioner's employment. The Petitioner also submitted a letter from her former supervisor, Lieutenant-Colonel G-A-M-T-[3] praising her work for the [redacted] but not stating the dates of her employment. In her autobiographical statement, the Petitioner lists her ranks and positions with the [redacted] from January 2015 to January 2020 and states she resigned from service in April 2021. The

[3] Initials are used to protect the privacy of individuals referenced in this decision.

Petitioner did not reference any subsequent employment. In response to the RFE, the Petitioner submitted additional records from the [redacted] of her employment from 2014 to 2020 and her receipt of an award in January 2021. The [redacted] records indicate the Petitioner was employed for between five and six years unlike the over eight years stated by the lieutenant-colonel of the Data Protection Center.

On appeal, the Petitioner does not address this inconsistency or clarify the dates of her employment with the [redacted] She states the evidence shows "the equivalence of more than five years of dedicated service in the specialized domain of security and counterintelligence analysis," but does not acknowledge that this criterion requires at least ten years of experience in the occupation. The Petitioner also submits a letter from G-M-S-N-, a former colleague, who praises the Petitioner's skills and work for the [redacted] G-M-S-N- references her "professional collaboration" with the Petitioner and does not indicate that she was the Petitioner's supervisor or employer. G-M-S-N- also does not state the dates of the Petitioner's employment with the [redacted]

The inconsistent evidence of the length of the Petitioner's employment shows that, at most, she was employed by the [redacted] for over eight years, but less than ten years. The Petitioner has not submitted letters from employer(s) showing that she has at least ten years of experience as a security and counterintelligence analyst and forensic science expert, and she consequently does not meet this criterion.

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

The Petitioner has not met two of the criteria she claims to satisfy and will not meet the requisite minimum of three criteria regardless of whether she satisfies this criterion. Accordingly, we do not reach and reserve the issue of whether she provided evidence of recognition for achievements and significant contributions. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

Because the Petitioner has not met her burden of proof to satisfy at least three of the initial criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. The Petitioner has not established that she is an individual of exceptional ability.

C. National Interest Waiver

Before a petitioner may demonstrate they merit a discretionary waiver of the job offer requirement in the national interest, they must first establish eligibility for the underlying EB-2 classification. The Petitioner has not established that she is a member of the professions holding an advanced degree or an individual of exceptional ability and she is consequently ineligible for EB-2 classification under section 203(b)(2)(A) of the Act. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility for a waiver of the job offer requirement in

the national interest. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7 (BIA 2015).

III. CONCLUSION

The Petitioner has not established her eligibility for EB-2 classification as an advanced degree professional or an individual of exceptional ability.

ORDER: The appeal is dismissed.