U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31842679

Date: JUL. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a CEO/Entrepreneur event planner, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 that the Petitioner did not qualify for the underlying EB-2 classification and had not established 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. 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 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

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.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> 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 in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating 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).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS)

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.[3]

II. ANALYSIS

As a preliminary matter, the Petitioner alleges on appeal that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, and erroneously applied the law, to the detriment of the [Petitioner]." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965). Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. See generally 1 USCIS Policy Manual E.4(B), https://www.uscis.gov/policy-manual. While the Petitioner asserts on appeal that she has provided evidence sufficient to demonstrate her eligibility for the EB-2 classification and a national interest waiver, she does not successfully explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. In denying the petition, the Director concluded that the Petitioner did not meet EB-2 classification eligibility through either avenue.

On appeal, the Petitioner asserts that she has "submitted concrete evidence corroborating that he (sic) meets at least 3 of the 6 criteria to demonstrate he (sic) possesses a degree of expertise above that ordinarily encountered in his (sic) field – thus establishing him (sic) as an alien of Exceptional Ability, as well as confirming that he (sic) qualifies for the requested classification." The Petitioner asserts that she has 13 years of experience in the event management industry and requests that we refer to TAB 5, her resume, "where she has provided substantial evidence to support the claim that she is an individual of exceptional ability." However, the Petitioner does not provide sufficient evidence or arguments addressing the concerns of the Director regarding her eligibility for the underlying classification. As the Director explained, even meeting 3 of the 6 criteria alone does not establish that the Petitioner is recognized as an individual of exceptional ability. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual (Objectively meeting the regulatory criteria alone does not establish that the beneficiary in fact meets the requirements for exceptional ability classification). For example, the Petitioner provided proof that she was a member of the Brazilian Association of Events (ABRAFESTA) and two other associations. However, the Director noted, and we agree, that while commendable, membership in ABRAFESTA was a qualification possessed by most members in her field, and as such, the Petitioner's membership did not demonstrate she has

[2] See also Poursina v. USCIS, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

exceptional ability. The Director did not discuss the Petitioner's other memberships. However, we will do so below.

To meet the criterion for evidence of membership in professional associations, the Petitioner submitted evidence of membership from three organizations, namely, ABRAFESTA, Brazilian Woman Association, and International Festivals & Events Association (IFEA). See 8 C.F.R. § 204.5(k)(3)(ii)(E). For Brazilian Woman Association, she submitted a letter which stated that she was "an active member" and was "very participative and . . . making a difference in our city with her business and network." The Petitioner did not submit any additional organizational information about Brazilian Woman Association. For ABRAFESTA, the Petitioner submitted a webpage print-out document titled, "The largest entity in the sector of social and corporate events in Brazil" which briefly describes that ABRAFESTA was created in 2009 in response to the "difficulties of the events market and the lack of a representative entity." The Petitioner submitted an affidavit from ABRAFEST dated July 20, 2022, stating that the Petitioner was "currently enrolled in our associate list since 8/1/2022)." It is unclear why the date of the affidavit precedes the Petitioner's enrollment in ABRAFESTA. For IFEA, the Petitioner submitted a welcome letter from member services addressing her by her first name, and information about IFEA's organization overview.

On appeal, the Petitioner does not specifically address the Director's conclusion that her membership in ABRAFESTA, and by extension, the other organizations, did not demonstrate that she has exceptional ability. However, the Petitioner asserts that she meets at least 3 of the 6 criteria. While the documents show the Petitioner's membership to ABRAFESTA, Brazilian Woman Association, and IFEA, the record does not include evidence showing that they are professional associations as contemplated by regulation. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The record does not show either of the entities requires that its membership body be comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. Without more, the Petitioner has not established that ABRAFESTA, Brazilian Woman Association, and IFEA, are professional associations such that her membership in them would be sufficient to meet this criterion. As such, the Petitioner has not demonstrated her membership in a professional association under this criterion. Consequently, we withdraw the Director's conclusion that the Petitioner met this criterion. Hence, the Petitioner has not shown that she meets at least 3 of the 6 criteria necessary to establish that she is an individual of extraordinary ability and is therefore ineligible for EB-2 visa classification.

As explained in the legal framework above, to establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach, but hereby reserve remaining arguments concerning the Petitioner's eligibility under the Dhanasar prongs. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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 satisfies the regulatory requirements for the EB-2 classification as an advanced degree professional or as an individual of exceptional ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.