U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32214700

Date: JULY 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant and auditor, 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 record did not establish the Petitioner qualifies for EB-2 classification as an alien of exceptional ability or that the Petitioner is eligible for the requested national interest waiver. 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.

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. 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.

[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/volume-6-part-f-chapter-5.

We adopt and affirm the Director's decision regarding the specific issue of eligibility for the EB-2 classification.[3] *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 that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner asserts on appeal that the Director "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." However, the Petitioner does not point to specific examples of how the Director did so. Importantly, she does not offer a detailed analysis explaining the particular ways in which the Director imposed such requirements in denying the petition, supported by pertinent law or regulation.

As noted, the Director determined that the Petitioner did not qualify as an individual of exceptional ability.[4] The Director concluded the Petitioner only satisfied the academic record and membership requirements and so did not establish she met at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

We agree with the Director that the Petitioner has not established at least ten years of full-time experience in her relevant occupation. On appeal, the Petitioner contends her employment at [redacted] from August 2014 to June 2018, [redacted] from January 2014 to August 2014, and [redacted] from April 2007 to December 2013 together demonstrates a combined time of over ten years. She claims that her initial submission of evidence did not include an employment verification letter from [redacted] because the filing was only intended to provide a "concise overview" of her professional history. She asserts that her later submission of the employment letter was to "supplement and complete the record, not to rectify any omission." She also argues that her acknowledgment in the business plan of eight years of experience was "specific to a particular aspect of [her] professional expertise and not a comprehensive statement of her total experience in the field."

The Petitioner has not provided a sufficient explanation for why her position at [redacted] was not listed as a related job on her Form ETA 750B, Statement of Qualifications of Alien, resume, and other documents filed with her initial submission if she considered them sufficiently relevant to qualify as work experience for this criterion. The Petitioner made no reference to this job in her initial filing, despite now claiming that she worked there for over six years, on a full-time basis, and in a job directly related to her proposed endeavor.

Nor is the letter written by her former classmate R-B- regarding the Petitioner's work at [redacted] sufficient to corroborate the Petitioner's employment at this company. R-B- states that she met the Petitioner while they were pursuing their master's degree in business administration. Since they graduated in December 2023, it seems R-B- has no personal knowledge of the Petitioner's past employment at [redacted] during the relevant period. R-B- provides no other basis for

[3] While we do not discuss every piece of evidence individually, we have reviewed and considered the whole record.
[4] The Petitioner does not claim eligibility for the EB-2 classification as an advanced degree professional.

her statements beyond her own "interactions and observations," which is not sufficient to carry the Petitioner's burden.

We note other inconsistencies in the Petitioner's evidence. For example, the Petitioner's business plan and expert opinion state the Petitioner possessed eight years of experience as an accountant. This is inconsistent with the information in the Petitioner's Form ETA 750B and resume, which reflect less than five years of experience, as well as the Petitioner's current claim that she has over ten years of experience. Moreover, the Petitioner's current claim that she began working with [redacted] in April 2007 indicates she began working for this company as an accountant when she was 19 years old, five years prior to her matriculation into university to receive her accounting degree.

The Petitioner has not provided an adequate explanation or other evidence to overcome these discrepancies. These unresolved questions and inconsistencies in the record cast doubt on the credibility of the documents submitted. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that a petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies). Without the discredited [redacted] letter, the positions which the Petitioner did properly document on her Form ETA 750B and resume comprise less than five years of work experience, rather than the 10 years required under 8 C.F.R. § 204.5(k)(3)(ii)(B). Thus, the Petitioner has not met her burden to establish eligibility under this criterion.

We also agree with the Director that the Petitioner did not submit sufficient evidence of her recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations as described at 8 C.F.R. § 204.5(k)(3)(ii)(F). On appeal, the Petitioner argues that her awards and certificates of appreciation serve as recognition of her significant contributions and exceptional performance, which has broader implications in the industry. She also contends that the expert opinion and recommendation letters constitute peer recognition of her significant contributions to the field.

While the awards and certificates demonstrate the Petitioner's dedication to her work and her employer's appreciation for her services, this evidence does not show that her work has had an impact beyond her employers, clientele, and their projects at a level indicative of achievements and significant contributions to the industry or field. Similarly, while the expert opinion and support letters discussed the Petitioner's skills, personal attributes, and career successes, they do not explain or show how the Petitioner's contributions were significant to the industry or field. Accordingly, the Petitioner has not established that she fulfills this criterion.

Because the Petitioner has not demonstrated eligibility for the underlying classification, we need not consider whether she merits a discretionary waiver of the job offer requirement "in the national interest" and, therefore, reserve the issue. *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"). The petition will remain denied.

ORDER: The appeal is dismissed.