U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37012365

Date: JUN. 12, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a logistics management consultant, 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 that the record does not establish that the Petitioner qualifies as an individual of exceptional ability or that the Petitioner is eligible for a national interest waiver as a matter of discretion. SCOPS subsequently denied combined motions to reopen and reconsider. 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.

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

[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 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,[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

SCOPS concluded that the Petitioner satisfied one of the six evidentiary criteria for exceptional ability; that the Petitioner established 10 years of full-time experience in the occupation. 8 C.F.R. § 204.5(k)(3)(ii)(B). However, SCOPS determined that the Petitioner's academic record is not related to the area of exceptional ability as required by 8 C.F.R. § 204.5(k)(3)(ii)(A). SCOPS further concluded that the Petitioner did not establish she commands a salary which demonstrates exceptional ability and that the recommendation letters do not establish she has been recognized for achievements and significant contributions to the industry or field. 8 C.F.R. § 204.5(k)(3)(ii)(D), (F). The Petitioner did not submit evidence of a license to practice the profession or for membership in a professional association. 8 C.F.R. § 204.5(k)(3)(ii)(C), (E). The Petitioner subsequently filed motions to reopen and reconsider with SCOPS where she submitted additional evidence contending, in part, that she meets the criteria of a license to practice her profession. 8 C.F.R. § 204.5(k)(3)(ii)(C). The combined motions were dismissed.

We note that, on appeal, the Petitioner does not address the criteria of membership in a professional association or recognition for achievements or significant contributions to the industry or field. 8 C.F.R. § 204.5(k)(3)(ii)(E), (F). We further note that she does not address her eligibility as a member of the professions holding an advanced degree. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, our analysis will only address the issues raised on appeal. After de novo review of the evidence, we conclude that SCOPS' dismissal of the motions was proper and we agree that the Petitioner does not meet at least three of the six required criteria, nor does she establish that she possesses a degree of expertise significantly above that ordinarily encountered in her field.

[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).

First, the Petitioner contends that she meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires an official academic record showing she has a degree, diploma, certificate, or similar award from a college, university, school or other institutions of learning relating to the area of exceptional ability. She submitted transcripts and an academic evaluation stating her education is equivalent to a high school degree in the United States. The evaluation further states that the Petitioner completed coursework in general studies. On appeal, the Petitioner contends that a high school diploma provides sufficient expertise in her profession as there is no specific educational requirement for her field. However, 8 C.F.R. § 204.5(k)(3)(ii)(A) requires an academic record that relates to the area of exceptional ability. The Petitioner's high school degree is for general studies and not related to her claimed area of exceptional ability. The Petitioner also submits transcripts from an undergraduate program, however, the Petitioner states that she did not complete this degree. Since her undergraduate program did not result in a degree, it does not meet this this criterion. Additionally, the Petitioner included certificates for additional courses she completed. However, the record does not establish the certificates are from a "college, university, school, or other institution of learning." *Id.* The name of the company offering the courses is not in English and the record contains no information about the company in order to determine if it could be considered a "college, university, school or other institutions of learning" as required. *Id.* Therefore, this criterion has not been established.

SCOPS determined that the Petitioner established at least ten years of full-time experience in the occupation, however, we disagree. 8 C.F.R. § 204.5(k)(3)(ii)(B). The Petitioner submitted her resume, recommendation letters from her previous employers, and "Working Time Statement Activities and Professional Reference[s]" that list, among other things, her weekly hours, job titles and duties, and dates of employment. These statements attest to her employment from February 2010 to October 2018. This establishes full-time experience for approximately 8 years and 8 months. We note that her resume states she has additional experience, but she did not submit evidence to substantiate additional experience. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. The record only contains supporting evidence for 8 years and 8 months of experience and therefore the Petitioner has not met this criterion. However, the Petitioner was not previously notified of this issue and did not have an opportunity to brief this issue. As she is not otherwise eligible for EB-2 classification we will reserve the issue of eligibility for this criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

In regard to 8 C.F.R. § 204.5(k)(3)(ii)(C), a license to practice the profession or certification for a particular profession or occupation, the Petitioner states that this criterion is not applicable since a license or certification is not required for her profession. However, on appeal, the Petitioner contends that the registration documentation for her business is a crucial equivalent as it allows her to operate her business. However, the Petitioner's profession is as a logistics manager consultant, and she has not provided a license to practice this profession. She contends that her company's registration validates her authorization to operate her business, but she has not provided evidence that this is a license to practice her profession as a logistics manager, therefore, the record does not establish that she has a license to practice her specific profession.

The Petitioner contends that she commands a salary which demonstrates her exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D). She states that the national average wage in Brazil for her profession is

BRL$5,162.87 per month and that she earns BRL$25,000 per month. The record contains a declaration from an accountant stating the Petitioner "has a monthly withdrawal of BRL 25,000," however, it is unclear if this "withdrawal" is her salary. The Petitioner also submitted a website reflecting the average salary in Brazil for a "Logistics Consultant." However, the website lists the average salary for a general logistics consultant and does not reflect salary of an owner of a logistics management consultant business. Additionally, this is the national average and not specific to the location in Brazil that the Petitioner conducts her business. Finally, we note that the Petitioner highlights the average salaries for small sized companies, but the images of the salaries for medium and large sized companies are blurred. Therefore, we cannot compare her salary to others working in the field. Since the record does not contain sufficient information about the Petitioner's salary or comparable wage data, the record does not establish that she has commanded a salary which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

Finally, the Petitioner provides documentation that she contends qualifies as "other comparable evidence to establish eligibility." 8 C.F.R. § 204.5(k)(3)(iii). She submits a letter of intent for a business partnership and asserts, "these facts are fully admissible in the context of a motion and/or appeal as they demonstrate the commercial strength that the petitioner holds." However, if a petitioner wishes to submit comparable evidence, they must first establish that the other standards for establishing exceptional ability do not apply to their occupation. The Petitioner has not asserted that the other criteria do not readily apply to her occupation, in fact, she argues that she has met the other criteria, therefore we will not consider the submitted documentation as comparable evidence.

For the reasons given above, the evidence does not establish that the Petitioner meets the eligibility requirements as an individual of exceptional ability and therefore does not meet the requirements for EB-2 classification. Because the Petitioner has not established that she meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that she possesses a degree of expertise significantly above that ordinarily encountered in her field. While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established her qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that she meets all three of the prongs under the *Dhanasar* analytical framework, she is ineligible for a national interest waiver, we need not reach, and therefore reserve, remaining *Dhanasar* prongs. *Bagamasbad*, 429 U.S. at 25.

## III. CONCLUSION

We conclude that the Petitioner has not established that she qualifies as an individual of exceptional ability by a preponderance of the evidence, or that she is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.