U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30254467

Date: JUNE 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a medical entrepreneur, seeks classification under the employment-based, second-preference (EB-2) immigrant visa category and a waiver of the category's job-offer requirement. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(B)(i), 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) has discretion to excuse job offers in this category – and thus related requirements for certifications from the U.S. Department of Labor (DOL) – if petitioners demonstrate that waivers of these U.S.-worker protections would be "in the national interest." *Id.*; *see also Poursina v. USCIS*, 936 F.3d 868,871 (9th Cir. 2019) (holding that the issuance of national interest waivers is discretionary).

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner demonstrated neither eligibility for EB-2 classification nor the merits of a national interest waiver. On appeal, the Petitioner contends that the Director applied too strict a standard of proof to her petition and disregarded evidence that she submitted in response to a request for additional evidence (RFE).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has not established EB-2 eligibility. We will therefore dismiss the appeal.

I. LAW

To establish eligibility for national interest waivers, petitioners must first demonstrate their qualifications for the EB-2 category, either as members of the professions holding "advanced degrees" or noncitizens of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. To protect the jobs of U.S. workers, this immigrant visa category usually requires prospective U.S. employers to offer noncitizens jobs and to obtain DOL certifications to permanently employ them in the country. *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D). Petitioners may avoid the job offer/labor certification requirements by demonstrating that waivers of the U.S.-worker protections would be "in the national interest." Section 203(b)(2)(B)(i) of the Act.

Neither the Act nor regulations define the term "national interest." So, to adjudicate these waiver requests, we have established a framework. If otherwise qualified as advanced degree professionals or noncitizens of exceptional ability, petitioners may warrant waivers of the job-offer/labor certification requirements by demonstrating that:

- Their proposed U.S. work has "substantial merit" and "national importance;"
- They are "well positioned" to advance their intended endeavors; and
- On balance, waivers of the job-offer/labor certification requirements would benefit the United States.

Matter of Dhanasar, 26 I&N Dec. 884, 889-91 (AAO 2016); *see generally* 6 *USCIS Policy Manual* F.(5)(D)(1), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Proposed Endeavor

The record shows that the Petitioner, a Filipino native and citizen, earned a bachelor's degree in medical technology in her home country. She stated that she has more than a decade of experience in the Philippines as an entrepreneur.

Now in the United States, the Petitioner submitted evidence that she is a part-owner and administrator of a U.S. nursing home.[1] She stated that she:

> plans to continue to work as an Entrepreneur in the [U.S.] medical field and/or in a nursing home/assisted living facility while providing advice and consultation to U.S. health care institutions, teaching and training medical professionals and workers in the medical field as well as advising U.S. companies operating or planning to venture into the lucrative health field.

B. EB-2 Eligibility

The Petitioner seeks EB-2 eligibility as both an advanced degree professional and a noncitizen of "exceptional ability." *See* section 203(b)(2)(A) of the Act.

1. Advanced Degree Professional

The term "advanced degree" includes "[a] United States degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2). The record does not support the Director's finding that the Petitioner has the foreign equivalent of a

[1] The Petitioner's RFE response included a "supplemental business statement/plan." The supplemental document indicates that she now operates two care facilities and seeks "to be the leading elderly care provider in the U.S. and branch out in all the States." A petitioner, however, must establish their eligibility "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). Thus, we will hold her to her initial proposal and disregard her supplemental plan. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998) ("[A] petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements.")

U.S. bachelor's degree. She submitted copies of academic records of her Filipino bachelor of science degree in medical technology. A university transcript indicates that, to obtain the 1990 degree, she studied six semesters, or three academic years.

U.S. bachelor's degrees usually require at least four academic years of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The record lacks evidence that the Petitioner's Filipino bachelor of science degree equates to a U.S. bachelor's degree or explaining how her apparent three-year degree compares to a U.S. four-year degree. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolved inconsistencies with independent, objective evidence pointing to where the truth lies).

On appeal, the Petitioner notes that an online database to which USCIS sometimes refers equates Filipino bachelor of science degrees to U.S. bachelor's degrees.[2] The database, however, indicates that Filipino baccalaureate degrees reflect four to five years of college or university studies. As previously indicated, the Petitioner's university transcript indicates that she studied three years for her degree. Also, the current database information might not apply to older Filipino bachelor's degrees like the Petitioner's, which she received more than 30 years ago. The Petitioner therefore has not demonstrated that her foreign degree equates to a U.S. bachelor's degree. We will therefore withdraw the Director's contrary finding.

Also, as the Director found, the Petitioner has not demonstrated possession of at least five years of progressive, post-baccalaureate experience in the medical field. To prove qualifying experience, a petitioner must submit letters from former or current employers. 8 C.F.R. § 204.5 (k)(3)(i)(B). The letters must contain the employers' names, addresses, and titles, and specifically describe a beneficiary's job duties. 8 C.F.R. § 204.5(g)(1). "If such evidence is unavailable, other documentation relating to the [noncitizen]'s experience or training will be considered." *Id.*

The Petitioner submitted seven recommendation letters. Contrary to 8 C.F.R. § 204.5(g)(1), however, none of the letters contains "a specific description of the duties performed by the [noncitizen]." The Petitioner does not claim or demonstrate that the required letters are unavailable. The letters also are not on the purported employers' letterheads, and the record lacks evidence that the authors worked for the claimed employers.

Further, the record contains inconsistencies regarding the Petitioner's purported job as a nursing instructor at a U.S. medical arts school. A recommendation letter from a purported school employee indicates the Petitioner's work as an instructor at the school from 2010 until at least 2022. The Petitioner also stated that she has worked full-time for the school since 2010. But she also stated her full-time work as a resident care director of a nursing home from February 2017 to February 2018. The Petitioner has not explained how she simultaneously worked two full-time jobs for a year. Elsewhere in the petition, she stated: "During my free time, I teach in Nursing school." This statement

[2] The Petitioner refers to the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit group with more than 14,000 members representing more than 2,300 institutions in more than 40 countries. *See* AACRAO, "Who We Are," www.aacrao.org/who-we-are; *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

suggests that the Petitioner does not work as a nursing instructor on a full-time basis. The discrepancies cast doubt on her claimed qualifying experience as an advanced degree professional. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies).

For the foregoing reasons, the Petitioner has not demonstrated EB-2 eligibility as an advanced degree professional.

2. Noncitizen of Exceptional Ability

The Director found that the Petitioner met two of six initial evidentiary requirements for this classification – one less than needed to obtain a final merits determination. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[3] The Director concluded that the Petitioner submitted an official academic record showing her receipt of a university degree relating to her claimed area of exceptional ability and a license to practice in her profession. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (C).

On appeal, the Petitioner contends that she also submitted evidence that she has: commanded a salary demonstrating exceptional ability; membership in professional associations; and recognition for her achievements and significant contributions to her field. *See* 8 C.F.R. § 204.5(k)(3)(ii)(D), (E), (F).

a. Salary or Other Remuneration for Services

To meet this criterion, a petitioner must submit "[e]vidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted a copy of a job offer letter she received from a nursing home in 2022. The letter, however, does not indicate the offered job's salary or wage rate. Also, the Petitioner did not submit evidence of the salaries or wage rates of other nursing home administrators.

On appeal, the Petitioner submits copies of her 2021 earnings statements from February through April. But she has not provided evidence of the salaries or wage rates of other nursing home administrators. Thus, we are unable to compare her wages to those of others in her field and determine whether her wage rate reflects exceptional ability. We therefore agree with the Director that the Petitioner has not demonstrated her commandment of a salary or other renumeration for services demonstrating exceptional ability.

b. Membership in Professional Associations

This criterion requires "[e]vidence of membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E).

[3] If the criteria "do not readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

The Director found that the Petitioner did not submit evidence to meet this requirement. On appeal, she claims she did.

The Petitioner's initial filing states that Exhibit 12 contains, in part, "proof of membership in [an] association." The exhibit contains copies of numerous certificates indicating her completion or attendance at courses, programs, or training sessions. But the certificates do not indicate her membership in associations. Thus, the Petitioner has not met this requirement.

c. Recognition for Achievements and Significant Contributions

To meet this requirement, a petitioner must submit "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner claims that she met this criterion by submitting "[n]umerous letters of support and reference from [her] colleagues, previous employers, [and] co-workers." We agree with the Director, however, that these letters do not constitute recognition for achievements and significant contributions to the industry or field.

The letters praise the Petitioner's work and describe her, for example, as "exceptionally motivated and talented," "very perceptive," and "very well-organized." But most of the letters do not identify achievements or significant contributions that she made to her field. One letter states that, during the Petitioner's employment, her nursing home employer reached a "100% Occupancy" rate. The record, however, does not explain her role in the accomplishment or indicate its significance in the field. The Petitioner therefore has not submitted evidence of her recognition for achievements and significant contributions to her field.

As the Petitioner has not met the requisite three evidentiary requirements, we need not make a final merits determination on her eligibility as a noncitizen of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.(5)(B)(2).

For the foregoing reasons, the Petitioner has not demonstrated EB-2 eligibility as an advanced degree professional or a noncitizen of exceptional ability. We will therefore affirm the petition's denial.

C. Marriage Fraud Bar

Although the Director did not address the issue, USCIS records indicate that the Act's "marriage fraud bar" may apply to this petition.

USCIS cannot approve a petition if a noncitizen previously sought permanent residence as the spouse of a U.S. citizen or lawful permanent resident based on a marriage "entered into for the purpose of evading the immigration laws." Section 204(c)(1) of the Act, 8 C.F.R. § 1154(c)(1). The bar also applies to a noncitizen who "has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." *Id.*

To apply the bar, the record must contain "substantial and probative" evidence of marriage fraud. *See Zerezghi v. USCIS*, 955 F.3d 802, 805 (9th Cir. 2020) (stating that USCIS may issue a notice of intent to deny a petition if the Agency finds "substantial and probative" evidence of marriage fraud). This standard is higher than a "preponderance of the evidence" but lower than "clear and convincing evidence." *Matter of P. Singh*, 27 I&N Dec. 598, 607 (BIA 2019). Substantial and probative evidence establishes that a marriage is "more than probably" fraudulent. *Id.*

USCIS records indicate that, in 2014, the Petitioner told immigration officers that, in 2010, she married a U.S. citizen, W.M., solely for immigration purposes. She reportedly signed a sworn statement that, during the marriage, she did not live with her spouse but rather with her former spouse, J.E., whom she had divorced earlier in 2010. She stated that she did not consummate her marriage with W.M. and that she agreed to pay him $15,000 for marrying her. She stated that she ultimately paid him nearly $20,000. "A sworn statement by the parties is direct evidence of fraud that is 'substantial and probative." *Matter of P. Singh*, 27 I&N Dec. at 607 (citations omitted).

The Director did not notify the Petitioner of this derogatory information or give her an opportunity to rebut it. Thus, we will not consider whether the marriage fraud bar prevents this petition's approval. In any future filing in this matter, however, to avoid the bar, the Petitioner must explain the derogatory information and submit evidence that she and W.M "intended to establish a life together at the time they were married." *Matter of P. Singh*, 27 I&N Dec. at 601 (citations omitted).

D. The Remaining Issues

Our conclusion that the Petitioner has not demonstrated EB-2 eligibility resolves this appeal. We therefore decline to reach and hereby reserve her appellate arguments regarding: the claimed national importance of her proposed endeavor; her positioning to advance it; and a waiver's purported benefits to the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise qualify for relief from removal).

III. CONCLUSION

The Petitioner has not demonstrated EB-2 eligibility as either an advanced degree professional or a noncitizen of exceptional ability. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.