U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30215031

Date: MAR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and skincare specialist, 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 that the Petitioner had not established eligibility as 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. 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 a national interest waiver, a petitioner must first show eligibility 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.[1] Section 203(b)(2)(B)(i) 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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] As the Petitioner has not claimed to qualify as a member of the professions holding an advanced degree, we need not address the separate requirements for that classification.

[2] 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).

[3] U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act.

As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined the Petitioner satisfied only one criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). On appeal, the Petitioner maintains she meets 8 C.F.R. § 204.5(k)(3)(ii)(B)-(D).[4]

An official academic record showing that the individual 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. 8 C.F.R. § 204.5(k)(3)(ii)(A).

We disagree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. The Petitioner provided a copy of her transcripts and Brazilian degree of "Technologist in Human Resources Management." However, the plain language of the regulation requires the degree to relate to her area of exceptional ability and the Petitioner has not claimed to have exceptional ability in human resources. The Petitioner also submitted certificates of completion for training courses including microneedling, microblading, micropigmentation, facial dermal puncture, and hair removal techniques. Although the trainings may relate to the Petitioner's claimed area of exceptional ability, the record does not show that they were received from an "institution of learning" or that they are "official academic record[s]." Without more, we cannot conclude that the Petitioner meets this criterion.

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. 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director determined that the Petitioner's employment verification letters did not establish ten years of full-time experience in the occupation. On appeal, the Petitioner asserts that her employment equates to more than ten years of full-time experience in her occupation.

Upon review, we agree and withdraw the Director's determination to the contrary. The Petitioner previously provided a Brazilian National Register of Legal Entities as proof that she provided aesthetic services under her company established in [redacted] 2015, along with two employment letters. The letter from [redacted] states the Petitioner was a freelancer in the position of micropigmentation artist from 2008 to 2018, working 20 hours a week. The [redacted] letter states that from 2004 to 2018, working 30 hours a week, the Petitioner's responsibilities included eyebrow design, micropigmentation, and management. Here, the letters establish that the Petitioner

[4] The Petitioner does not contest the Director's determination that she does not meet 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), as such these issues are waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012), (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived); *See also, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

has at least ten years of full-time experience in the occupation of esthetician and, therefore, she has established that she meets this criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Director concluded that the Petitioner did not demonstrate that the occupation requires a license or certification. On appeal, the Petitioner provides information from the Florida Department of Health that states that "[p]ersons who practice cosmetic tattooing, permanent make-up, microblading, or micropigmentation" are required to have a "Tattoo Artist License." We agree with the Petitioner that a license is required for the occupation and that the provided copy of her license is sufficient to meet this criterion.

Evidence that the alien commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

On appeal, the Petitioner asserts that she has "always earned more than the average of professionals" in her field and, therefore, she has an "exceptional ability wage." The Petitioner previously provided an income statement from her accountant showing that, from 2014 to 2017, she earned R$60,000 and in 2018, she earned R$81,000 as a managing member of her company. She further states that the average wage of a professional working in the same area is R$21,372 and provides a snippet from vagas.com, an employment search website in Brazil, for the position of micropigmentator. However, this evidence alone does not demonstrate how the Petitioner's earnings are indicative of her claimed exceptional ability relative to others in her field.

Regarding the income statement from her accountant, we note that it is not substantiated with independent and objective evidence, such as invoices, bank statements, and/or tax returns. Further, the vagas.com website screenshot does not offer sufficient information or details to verify the applicability and accuracy of the stated salary information. For instance, the screenshot lacks such critical information as the year or date range to which the data refers, how the data was compiled, the statistical significance of the data, the geographic location to which the data pertains, and other indications of the reliability and comparability of this data to the Petitioner's occupation.

Even if the Petitioner had provided such evidence, it would not be sufficient to establish eligibility under this criterion. The Petitioner requests us to compare the vagas.com figures for micropigmentator earnings with her income as a managing member of her business. As a micropigmentator and a managing member of a company are two distinct occupations, the Petitioner has not provided us with a proper basis for comparison.

For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

Because the Petitioner has only met two of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii), she cannot fulfill the initial evidentiary requirement of three criteria. Thus, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. In addition, we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver

under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.