U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29854419

Date: MAR. 14, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur for an agricultural advisory service business, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement "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.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three

of which must be satisfied, for an individual to establish exceptional ability:

> (A) An official academic record showing that the alien 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;
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> (B) 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;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
>
> (D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence 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).[1]

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] We then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Matter of Chawathe, 25 I&N Dec. at 376.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of

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[1] The regulations provide that if any of the criteria do not readily apply to a beneficiary's occupation, comparable evidence may be submitted to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] See generally 6 USCIS Policy Manual F.5(B)(2), https: //www.uscis.gov/policy-manual.

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual, supra, at F.5(B)(2).

Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[4] 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.

II. ANALYSIS

The Petitioner proposes to be the chief executive officer for her agricultural advisory service business, [redacted], in Illinois. With respect to the underlying EB-2 classification, the Petitioner initially submitted evidence with the petition to meet five of the six criteria of evidence for exceptional ability. The Director concluded that the Petitioner met one criterion, official academic record from a learning institution in the area of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A). However, as discussed below, we find the record does not support the conclusion that the Petitioner meets this criterion.

In denying the petition, the Director found the Petitioner did not meet the criteria for ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B), commanded a salary demonstrating exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), membership in a professional association at 8 C.F.R. § 204.5(k)(3)(ii)(E), and recognition for achievements and significant contributions to the field at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director further found that the Petitioner did not merit a discretionary waiver of the job offer requirement "in the national interest."

On appeal, the Petitioner reasserts being an individual of exceptional ability by satisfying the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (D)-(F), and that the record shows by a preponderance of the evidence that she qualifies for the national interest waiver. After reviewing the evidence in the record, we find that the Petitioner has not demonstrated satisfying at least three of the six initial evidentiary criteria and is not otherwise eligible for the requested benefit.[5]

> 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).

The Petitioner relies on various certificates and course completion documents to meet this criterion, namely:

- Certificates from [redacted] stating she completed a 280 hour course, "Grain Classifier" from August 11, 2021, to September 16, 2021, with a grade of 100 points, and the 180 course, "Soils and Fertilization" from July 12, 2021, to August 5, 2021, with a grade of 80 points. The record includes a list of the program content for each course.

[4] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[5] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

- A certificate from [redacted] in Brazil stating she completed a four hour course entitled, "Environmental Analyst: Technical and Legal Knowledge – Free". The record includes a list of the program content and an indication that it is four total credit hours.
- Certificates from [redacted] in Brazil indicating the distance courses she completed and the number of hours for each course, namely "Soil Acidity Correction" two hour course, "Soil Component in ILPF Systems" ten hour course, "Precision Agriculture in Different Cultures" 17 hour course, "Cultivation and Production of Grains" 15 hour course, "Biological Fixation of Nitrogen" 20 hour course, and "Climate Change and Agriculture" 20 hour course.
- A certificate from [redacted] in Brazil stating that she "attended the online course 'Costs to produce in the countryside'" for four hours on July 14, 2021.
- A training course certificate from [redacted] stating she completed the 20 hour course, "Agricultural Machinery Maintenance".
- A certificate from [redacted] stating she "attended as a listener" for an event "offered at the university extension level".

However, it is not readily apparent that these certificates meet the plain language of the regulation. The record does not include evidence relating to the parties issuing these certificates. Without additional evidence, the record does not sufficiently establish that any of the certificates were issued from a "college, university, school, or other institution of learning" or that the certificates are "an official academic record." Therefore, we withdraw the Director's finding regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

> Evidence in the form of letter(s) from current or former employer(s) showing that the individual 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).

To meet this criterion, the Petitioner initially submitted two letters. The first letter is from the Petitioner dated in February 2022, stating she has been the sole partner and owner of [redacted] in Brazil since December 2007 with a list of her job responsibilities. However, the letter does not indicate whether the Petitioner has worked full-time. Also, the Petitioner's letter is not accompanied by objective, independent evidence sufficient to corroborate the Petitioner's statements. The Petitioner's statements are not sufficient to demonstrate the criterion. The Petitioner must support her statements with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

The second letter is from [redacted] the chief executive officer at [redacted] briefly stating, "[The Petitioner] is my partner as an [investor] in [redacted] since September 2019." However, the letter does not indicate whether the Petitioner has worked for the company, whether she has worked in a full-time capacity, or her job duties to show experience in the occupation.

The record shows that the Director notified the Petitioner that the initially submitted evidence was not sufficient to meet the criterion and requested further evidence. The Petitioner's reply letter indicated she was "providing additional evidence to fulfill the criterion" in "TAB 6.2". However, the Director's decision pointed out that the Petitioner's reply did not include additional documents under a "TAB

6.2". A review of the record confirms the documentation was not submitted with the Petitioner's reply letter.

The Petitioner argues on appeal that she "submitted documentation evidencing over [15] years of experience in the agricultural sector, inclusive of letters from Human Resources and letters of support." The appeal does not include the additional documentation to support her argument. Although the Petitioner initially submitted letters of recommendation from colleagues attesting to her work in the field, the letters are not from her employer(s) showing her ten years of full-time experience in her occupation, as required by the criterion. Also, the record does not include a letter from "Human Resources", as indicated in her appeal.

Since the record does not demonstrate that she has at least ten years of full-time experience in her occupation, the Petitioner has not established that she meets the plain language of the criterion.

> Evidence that the individual 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's letter submitted with the initial petition states, "We are not submitting evidence to fulfill this category at this time." In her letter replying to the request for evidence notice, she states, "[The Petitioner] will be submitting documentation that showcases her history of receiving compensation for her work. These records will demonstrate the value placed on her skills and expertise in the industry, as reflected in salaries and remuneration she has earned throughout her career (TAB 6.3)." (emphasis omitted). However, the Director's decision pointed out that the documentation was not included with the reply. After reviewing the record, we confirm that the reply letter did not include the additional documentation to meet this criterion.

The Petitioner argues on appeal that the Director did not review documentation submitted showing "proof of donations made to the municipality of her county, amounting to R$157,144.77." Although the record includes the Petitioner's Brazil tax documentation relating to rural property for [redacted] such documents do not show the Petitioner's salary or renumeration for her services which demonstrates her exceptional ability, as required by the criterion.

The record lacks evidence to demonstrate she meets this criterion.

> Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

To meet the criterion, the Petitioner initially submitted evidence of membership from three organizations. The first is a "certificate of membership condition" dated August 18, 2021, from [redacted] stating that the Petitioner is "enrolled under [redacted] under registration No 46.216" and "is regularly associated with [redacted] since July 19, 2021. The second is a membership affidavit dated August 30, 2021, from [redacted] stating, "[The Petitioner] is a rural producer and member of the [redacted] . . . since August 13, 2021." The third is a suitability letter dated January 11, 2022, from [redacted] a credit cooperative, stating the Petitioner has been a member since August 19, 2002, and that she "has proceeded, to date, correctly in its transactions with the Cooperative . . . ."

In the request for evidence, the Director notified the Petitioner that this initial evidence was not sufficient to meet the criterion. The Petitioner's reply letter states, "[The Petitioner] will be submitting documentation such as membership certificates and confirmation letters from relevant professional associations in the field" which "will demonstrate her active involvement affiliation with esteemed organization within the industry . . . (TAB 6.4)." (emphasis omitted). However, we confirm the Director's determination that this additional evidence was not included in the reply.

On appeal, the Petitioner argues that Director did not recognize "the letter from [redacted] which confirms: 'Please be informed that [the Petitioner] . . . is a member in good standing through 2023 with the [redacted]' No additional documentation supporting this claim was submitted with the appeal. Also, a review of the record does not show that the Petitioner submitted such letter with the reply letter.

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 that any of [redacted] is a professional association as required under the criterion. The record does not show that any of these 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. Therefore, the Petitioner has not demonstrated her membership in a professional association under this criterion.

> Evidence 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).

To meet this criterion, the Petitioner initially submitted letters of recommendation from colleagues in her industry. In a request for evidence notice, the Director notified the Petitioner that the letters were insufficient to meet this criterion. In her reply letter, the Petitioner indicated, "We are submitting additional evidence to satisfy this criterion (TAB 6.5)." (emphasis omitted). However, we confirm the Director's determination that this additional evidence was not submitted with the reply.

On appeal, the Petitioner argues that to meet this criterion, her reply to the request for evidence included a letter from [redacted] A review of the record does not show that this letter was submitted by the Petitioner.

The letters in the record are from the Petitioner's business clients who attest to the Petitioner being a competent, reliable soybean producer who sold quality agricultural product to them. While the letters confirm the Petitioner's experience and knowledge in the soybean industry, they do not demonstrate that she has been recognized for achievements and significant contributions to the industry or field, as required under the criterion.

Since the Petitioner has not established that she meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise

significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

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, we reserve our opinion regarding 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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference employment visa as an individual of exceptional ability. Therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.