U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37435534

Date: MAR. 25, 2025

Appeal of Texas Service Center Decision

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

The Petitioner 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 Petitioner did not establish that she 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.

To determine 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;

(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;

(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;

(E) Evidence of membership in professional associations; or

(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 Dhanasar,* 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish 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).

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.

Id. at 889.

II. ANALYSIS

The Petitioner proposes to continue her career in the United States as a CEO/Entrepreneur in the field of design. In her initial cover letter, the Petitioner stated that she will accomplish the following goals:

> "I intend to continue using my expertise and knowledge, gained through my 24 years of professional experience in Interior Design, to work as a CEO/Entrepreneur and contribute to the U.S. economy, and its societal welfare, through the development and expansion of my registered and filed company [redacted][ ], specialized in offering residential and corporate Interior Design throughout the American territory.
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> . . .
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> In a nutshell, [redacted], will provide general Interior Design services, executing residential and corporate projects, detailing furniture and joinery, while specifying products: blinds, curtains, rugs, adornments, among others. Within its provision of services, it will advise clients in the purchase and assembly of joinery and environments until the conclusion of the project. The plan is initially to capture Brazilian and Latin American community across the US, and simultaneously the American one. More importantly, it will bring innovation to the market, transforming houses into unique homes, and corporate spaces with a vision of status, magnitude and prosperity."

With respect to the underlying EB-2 classification, the Petitioner submitted evidence to support her argument that she meets at least three of the six criteria of evidence for exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner argued that she had an official academic record showing that she 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 at 8 C.F.R. § 204.5(k)(3)(ii)(A); at least ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B); membership in a professional association at 8 C.F.R. § 204.5(k)(3)(ii)(E); and recognition for achievements and

[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).

significant contributions to the industry or field by peers, governmental entities, or professional or business organizations at 8 C.F.R. § 204.5(k)(3)(ii)(F). However, the Director concluded that the Petitioner only met one of the criteria – 8 C.F.R. § 204.5(k)(3)(ii)(A). The Petitioner has a bachelor's degree in history from the University of [redacted] and a technical degree in interior design from the [redacted]. 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 claims that the Director applied a stricter standard of proof than preponderance of evidence. As discussed below, we disagree with the Petitioner's claim, and concur with the Director that the Petitioner has not established that she is an individual of exceptional ability.

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

> 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).

To meet this criterion, the Petitioner claims she has been the sole owner of [redacted] since January 2022. She also submitted an employment verification letter from [redacted] dated May 2022 stating that the Petitioner has been working for the company since September 2013; and a letter from [redacted] dated March 2023 stating that the Petitioner worked for them from May 2005 to August 2012. The Director observed that the letter from [redacted] did not indicate if the Petitioner worked for them on a full-time or part-time basis. Thus, the Director concluded that the record did not contain evidence in the form of letters from current or former employers showing that the Petitioner had at least ten years of full-time experience.

On appeal, the Petitioner argues that the evidence she provided demonstrates that she has over 18 years of full-time experience in the occupation. We note that the letter from [redacted] is signed by the Petitioner, and she declares that she has been the partner/owner of [redacted] since September 2013. However, although the letter lists the Petitioner's job responsibilities for the business, it does not state whether she was engaged in these work activities on a full-time basis. We acknowledge that the letter from [redacted] states that the Petitioner worked on a "full-time basis (40 hours a week)" from May 2005 to August 2012. However, the Petitioner's statement referencing the evidence she submitted is not sufficient to demonstrate this criterion. The Petitioner must support her statements with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Because the record does not cumulatively 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.

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

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

To meet this criterion, the Petitioner submitted her membership card for the [redacted] and information about [redacted] However, the Director observed that the Petitioner did not submit any information about the requirements of being an [redacted] member so that the Director could determine whether the association was professional in nature.

On appeal, the Petitioner asserts that she submitted her membership card to the [redacted] which proves her membership, thus she claims she has satisfied this criterion. However, we note the petition was filed in October 2022. But her [redacted] membership card, which was printed from the [redacted] website in May 2023, indicates that she is a "2023 Member." Moreover, the membership card does not show the initial date of her membership. A petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, the Petitioner has not offered documentation showing her membership in a professional association at the time of filing, as required. The Petitioner must support her statements with independent, relevant evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

> 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 satisfy the plain language of the criterion, the Petitioner is required to demonstrate that she has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions. In support of this criterion, the Petitioner submitted recommendation letters describing her qualities, experience, work accomplishments, communication skills and interpersonal relationships. However, as the Director correctly observed, the letters did not explain how the Petitioner's skills and professional experience constituted recognition of achievements and significant contributions to the industry or field of design. The Petitioner also submitted numerous trainings and certifications. While the Director acknowledged these achievements, they correctly noted that they may have been a testament to the Petitioner's skill, experience and talent but the record did not contain sufficient evidence that the Petitioner received recognition for achievements or contributions to the field of interior design.

On appeal, the Petitioner argues that she meets this criterion because she "has achieved significant recognition over her 27+ years of experience, grounded in her strong academic and professional background. She has extensive expertise in both specialized and managerial roles within the business and interior design sectors. Her experience equips her to effectively lead and manage business projects as a CEO and entrepreneur." Upon review, the evidence in the record does not demonstrate that the Petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field. While the Petitioner has registered a business in Florida, registering a business does not show recognition for achievements or significant contributions to her industry. The letters of recommendation attest to the Petitioner's competence, valuable skillset, expertise and work contributions. However, they do not provide information on how the Petitioner's experience in the field equates to achievements and

significant contributions to the industry or field recognized by peers, governmental entities, or professional or business organizations. Moreover, the recommendation letters were not accompanied by any corroborative evidence of the impact of the alien's work, such as examples of implementation of her strategies, methodologies or innovations, or how the Petitioner's work has otherwise been recognized in the field or that it has been recognized beyond the work done for her customers. USCIS may, in its discretion, use such letters as advisory opinions submitted by expert witnesses. However, USCIS is ultimately responsible for making the final determination of the individual's eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). Without documentation showing that the Petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field, we cannot conclude that the Petitioner meets this criterion.

8 C.F.R. § 204.5(k)(3)(iii) states that if the above standards do not readily apply to the occupation, the Petitioner may submit comparable evidence to establish eligibility. The Petitioner submitted a resume, business plan, and other documents related to [redacted]. However, the Petitioner did not persuasively explain why the standards do not readily apply to her occupation. As such, this evidence will not be considered in the context of "comparable" evidence.

Because 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). Consequently, we conclude that the evidence does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

III. CONCLUSION

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) (noting that "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). The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.