U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42682190

Date: MAY. 01, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business manager, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish eligibility for the requested EB-2 immigrant classification or national interest waiver. 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 the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[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).

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

The Petitioner asserts that she is eligible for EB-2 classification as an individual of exceptional ability in business management.[3] She claims eligibility under five of the evidentiary criteria related to having a degree in the area of exceptional ability, at least ten years of full-time experience, a license to practice, membership in a professional association, and recognition for achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C), and (E)-(F). As indicated above, in order to meet the initial evidence requirements for this classification, a petitioner must show that they meet at least three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). SCOPS determined that the Petitioner met all five claimed criteria but did not establish eligibility in a final merits determination. On appeal, the Petitioner asserts that SCOPS' decision "contains numerous erroneous conclusions of both law and fact" and that the record establishes the Petitioner's eligibility for EB-2 classification. While we acknowledge that there are errors in SCOPS' decision, we agree with their conclusion that in a final merits determination, the record does not establish the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field and is therefore not eligible for the requested classification.

A. Evidentiary Criteria

As an initial matter, upon review, we determine that the record does not establish the Petitioner's eligibility for the evidentiary criteria related to membership in a professional association and recognition for achievements and significant contributions to the industry. 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F). SCOPS determined that the Petitioner met the criterion of membership in a professional association. 8 C.F.R. § 204.5(k)(3)(ii)(E). The record contains evidence of the Petitioner's membership in the Brazilian Administration Association. The Petitioner also submitted information about the organization; including their official bylaws. Based on the

[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).

[3] We note that SCOPS determined that the Petitioner does not qualify as member of the professions holding an advanced degree. On appeal, the Petitioner states that "the Advanced Degree was never presented, nor was any documentation submitted with the intention of obtaining recognition under that classification." Upon review, the record confirms the Petitioner's statement, and therefore, our analysis is limited to the Petitioner's eligibility as an individual of exceptional ability.

information provided about membership in the organization, membership includes "[a]ny individuals or companies that carry out administration-related activities. . . as well as individuals, companies, or organizations that carry out similar activities and agree with the present bylaws. . . ." The term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The record does not establish that membership in this organization requires a U.S. bachelor's degree or foreign equivalent. Therefore, the Petitioner has not demonstrated her membership is in a professional association, and we withdraw SCOPS' determination that the Petitioner meets this criterion.

Moreover, the Petitioner has not submitted sufficient 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). The record contains various recommendation letters that generally praise her work but do not establish significant contributions to the industry or field. For example, in a letter written by L-R-D-, the author states that the Petitioner stands out for her "ability to meet targets and deadlines, always with diligence and responsibility" and that she is a "high-quality professional, whose qualities and skills are a valuable asset to any enterprise." Further, in a letter written by V-M-W-, the author praises the Petitioner's "dedication and ability to perform her duties as well as her quick resolution to difficulties and commitment to the workplace and her colleagues." While these letters detail the Petitioner's good work and the contributions she made to these specific employers, the letters do not establish significant contributions to the business management industry as a whole. Again, while this evidence demonstrates the Petitioner's experience in the field and her positive reputation, it does not demonstrate significant contributions to the industry. Therefore, the record does not establish the Petitioner meets this criterion, and we withdraw SCOPS' determination to the contrary.

B. Final Merits Determination

Although we conclude the Petitioner does not meet the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), for the reasons explained above, the Petitioner still satisfies at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). As a preliminary matter, we reiterate that meeting the minimum requirements of providing at least three types of initial evidence does not, in itself, establish that a petitioner is an individual of exceptional ability.[4] In addition to meeting the plain language of the evidentiary criteria, the evidence must then be considered in a final merits determination to determine whether the evidence, in its totality, establishes that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

On appeal, the Petitioner contends that SCOPS erred by using extraordinary ability language in their analysis. For example, the decision states that the Petitioner "must provide documentation of sustained national or international acclaim." We agree that this is not the standard for exceptional ability. As stated above, to qualify as an individual of exceptional ability, the Petitioner must show that the

[4] *See Kazarian v. USCIS*, 596 F.3d 1115 (9thCir.2010)(discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 *USCIS Policy Manual*, supra, at F.5(B)(2).

evidence, in its totality, establishes that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. In addition, the Petitioner highlights that the decision erred by stating that "evidence of exceptional ability typically includes proof that the beneficiary has earned a salary or other compensation significantly higher than that of others in similar roles, reflecting a level of expertise and recognition above the norm" and further states that the Petitioner did not provide this type of evidence. The Petitioner states that she "affirmatively waived" this criterion and that the *USICIS Policy Manual* does not require this criterion be satisfied. Although evidence that the Petitioner has commanded a salary, or other renumeration for services, which demonstrates exceptional ability could be one factor indicative of exceptional ability, we agree with the Petitioner that it is not a requirement and that the record confirms she waived the criterion at 8 C.F.R § 204.5(k)(3)(ii)(D). While we acknowledge that there are some instances where SCOPS' analysis was flawed, we agree with their determination that the record does not establish the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field for the reasons below.

The record demonstrates that the Petitioner has education, training, and several years of experience in the business management field, but the record as a whole does not establish she possesses expertise significantly above that ordinarily encountered in the field. The record contains evidence of the Petitioner's foreign bachelor's degree in business administration from [redacted] as well as various certificates from her completion of business-related trainings. On appeal, the Petitioner highlights that she graduated from [redacted] which she contends is a "recognized institution" which "governmental evaluations confirm. . . meet defined quality standards, lending institutional weight to the degrees and credentials conferred." First, the record does not contain information to support the Petitioner's claims about the governmental evaluations of [redacted] and how this sets [redacted] apart from other universities in Brazil. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. Additionally, the record does not establish that her credentials and qualifications are above what would normally be expected in her field. She did not, for example, compare the knowledge she has gained through her degree and various training certificates to others in her field to demonstrate why this knowledge is significantly above that ordinarily encountered in the field. Instead, the evidence of her degree demonstrates she has met the general qualifications for earning a bachelor's degree in business administration and has obtained general business-related certificates.

In regard to the Petitioner's license from the Regional Council of Administration, the Petitioner contends that "a professional license is required to practice Business Administration in Brazil." This too is not evidence that the Petitioner possesses expertise significantly above that ordinarily encountered in the field if it is required of everyone in the field. Further, as discussed above, membership in the Brazilian Association of Administration only requires a person be carrying out administration-related or similar activities. Therefore, although this shows that she has complied with the requirements of someone in the business administration field in Brazil and that she performs administrative activities in her work; this evidence does not further establish expertise significantly above that ordinarily encountered in the field.

Moreover, the recommendation letters in the record do not further establish she possesses expertise significantly above that ordinarily encountered in her field. Although the letters universally praise her work and establish she has many years of experience in administrative and business management roles,

they do not establish how this experience, together with her education and training, has provided her with expertise significantly above that ordinarily encountered in the field. For example, in the letter written by G-P-B-, the author details his experience with the Petitioner's event planning company. He states that she "demonstrated punctuality, organizations, and a deep sense of responsibility." This letter, along with the others, commends the Petitioner on being a dedicated worker with a good reputation, but the letters do not discuss how her expertise is significantly above that ordinarily encountered in the field. Accordingly, we conclude that the record, as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability. Although the Petitioner has satisfied three of the initial categories of evidence, the record does not demonstrate that she has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.8 C.F.R. §204.5(k)(2).[5]

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Because the Petitioner waived the issue of her eligibility as an advanced degree professional and did not establish eligibility as an individual of exceptional ability, she has not demonstrated eligibility for EB-2 classification. Therefore, the Petitioner is not eligible for a national interest waiver, and we reserve our opinion regarding these issues. *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).

III. CONCLUSION

We conclude that the Petitioner has not established by a preponderance of the evidence that she qualifies as an individual of exceptional ability, 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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[5] *See also* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).