U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37921468

Date: MAY 09, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a pelvic physiotherapist who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver (NIW) 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).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record did not establish that the Petitioner qualified for the underlying visa classification. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of exceptional ability individuals. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. 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.

II. ANALYSIS

SCOPS denied the underlying EB-2 classification relating to the Petitioner's status as an advanced degree professional, as well as on alternative grounds as an alien of exceptional ability. Because of those dispositive determinations, SCOPS declined to make a decision on the Petitioner's NIW claims.

A. The Petitioner's Claims Before SCOPS

We begin with general governing regulatory provisions. A filing party must establish they are eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). *See also Delaware Valley Reg'l Ctr., LLC v. DHS*, 106 F.4th 1195, 1204 (D.C. Cir. 2024) (citing 8 C.F.R. § 103.2(b)(1)). That same regulatory provision requires that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions." The instructions associated with the Petitioner's petition discussed initial evidence and under the advanced degree professional section it notified the Petitioner that in addition to her foreign equivalent to a U.S. baccalaureate degree she must submit "letters from current or former employers showing the alien has at least five years of progressive postbaccalaureate experience in the specialty." The failure to follow the form instructions means the Petitioner did not comply with the regulation. *See also Ramirez-Coria v. Holder*, 761 F.3d 1158, 1162 (10th Cir. 2014) (concluding that the failure to follow immigration form instructions can result in the dismissal of an application or petition); *Statewide Bonding, Inc. v. DHS*, 980 F.3d 109, 116 (D.C. Cir. 2020); *Mejia-Velasquez v. Garland*, 26 F.4th 193, 201–05 (4th Cir. 2022); *Bare v. Barr*, 975 F.3d 952, 974 (9th Cir. 2020); *Sunday v. Att'y Gen. United States of Am.*, 832 F.3d 211, 213 (3d Cir. 2016); *Ahmed v. Mukasey*, 519 F.3d 579, 582 (6th Cir. 2008).

The regulation further discusses initial evidence providing in pertinent part: "If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility . . . ." 8 C.F.R. § 103.2(b)(8)(ii). The regulation at 8 C.F.R. § 103.2(b)(8) does not require solicitation of further documentation, as long as the missing or inadequate evidence is included as initial evidence within the regulation governing the classification or the form instructions.

The Petitioner initially offered evidence of her foreign degree, and to support her claim that she had at least five years of post-baccalaureate experience she only offered her curriculum vitae (CV). The Petitioner's CV amounts to an assertion that she possesses the requisite work experience, but the regulation requires more. The regulation defines an advanced degree as: "*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." 8 C.F.R. § 204.5(k)(2). The regulatory definition contains additional requirements for those with a U.S. bachelor's or foreign equivalent, in that they demonstrate they have at least five years of progressive experience in the specialty. *Id.* Deriving from that definition, the regulation at 8 C.F.R. § 204.5(k)(3)(i) includes specific initial evidence petitioners must submit to show they

qualify as a professional holding an advanced degree. Namely here, "evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

After indicating the Petitioner met the advanced degree requirements in the request for evidence (RFE), SCOPS subsequently determined that the Petitioner was not eligible for the EB-2 classification based upon her claims relating to her foreign bachelor's degree equivalent and at least five years of progressive post-baccalaureate work in her field. But SCOPS did not explain why they ultimately made and adverse determination on this issue.

We also observe that she was put on notice of the type of initial evidence required to demonstrate she is an alien holding an advanced degree. Recall that USCIS regulations and form instructions informed the Petitioner she must submit evidence in the form of letters from current or former employers showing she possesses at least five years of progressive post-baccalaureate experience in the specialty. The Petitioner was required to submit that evidence when she filed the petition. It appears this was the shortcoming SCOPS relied on when it partly denied the petition on this basis.

When evaluating the Petitioner's eligibility as an alien of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii), SCOPS decided she satisfied two of the regulatory criteria, but that she failed to meet a third required criterion further supporting their position that she did not qualify under the EB-2 requirements.

B. The Petitioner's Appellate Claims

Now, the Petitioner advances three bases for her appeal. First, she claims SCOPS erred in their determination that she did not establish eligibility as a member of the professions holding an advanced degree. Next, she alleges SCOPS made a factually incorrect statement relating to the work she would perform in the United States. And finally, she claims SCOPS erred by not providing specific reasons why her evidence did not satisfy the NIW requirements.

But these bases will be of no avail in changing this case's outcome. On the Petitioner's first basis, she claims that SCOPS erred in their determination that she did not establish eligibility as a member of the professions holding an advanced degree, the Petitioner notes she provided her foreign degree with an English translation, an evaluation of that foreign degree equating it to a U.S. Bachelor of Science in Physiotherapy, and to document her five years of post-baccalaureate experience, her CV.

The education evaluation from [redacted] that the Petitioner presented was not accompanied by any transcripts. As noted above, the evaluator equated her degree to a U.S. bachelor's degree. The evaluator appears to have made that determination based on the issuance of a diploma, rather than a combination of examination of the degree and the Petitioner's transcripts. Absent the transcripts accompanying the Petitioner's undergraduate degree demonstrating four years of study, she has not established that she received a degree equivalent to a U.S. bachelor's degree. *See* 8 C.F.R. § 204.5(k)(3) (requiring the submission of an official academic record).

Further, the evaluation stated: "No transcript was submitted for evaluation." It is therefore unclear how the evaluator determined that the Petitioner achieved a 3.91 grade point average for her graduate

degree without some form of documentation that is in the record of proceeding to support that statement. This shortcoming diminishes the evidentiary value of the education evaluation, and the Petitioner has not met her burden to adequately demonstrate she holds a foreign degree determined to be equivalent to a U.S. bachelor's degree. Credential evaluations are only advisory and if they are questionable in any way, USCIS may accord them with less evidentiary weight. *See Matter of Sea*, 19 I&N Dec. 817, 820 (Comm'r 1988).

Because the Petitioner did not provide evidence showing she earned a degree above that of a U.S. bachelor's, she must also demonstrate she satisfies the five-year experiential requirement at 8 C.F.R. § 204.5(k)(2). But as we noted above, evidence demonstrating she has at least five years of progressive post-baccalaureate experience in the specialty should be documented in the form of letters from current or former employers, and not through a CV that she relies on in the appeal brief. Again, this material essentially amounts to an uncorroborated assertion from the Petitioner. Unsupported assertions and speculation have little evidentiary value and are insufficient to establish a filing party has satisfied their burden of proof; such assertions do not even make a prima facie eligibility showing. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024).

The fact that the record was missing this initial evidence would have served as a sufficient basis for SCOPS to deny the petition without issuing an RFE. A review of the record does not reveal any other evidence that would establish the Petitioner has at least five years of full-time, *progressive*, post-baccalaureate experience in the specialty. And we find no error that SCOPS denied the petition on this basis as she still has not submitted the type of initial evidence the regulation requires relating to her work experience.

Turning to her second basis she notes SCOPS stated the following in the denial decision: "The petitioner did not indicate on the Form I-140 filed on November 24, 2023, what she intends to work as, nor did she provide a nontechnical job description." We agree that she included that information in her petition and the associated documents. But even if that was an error on SCOPS' part, the Petitioner does not indicate how that mistake might have influenced their determination that the case should be denied. Recall, SCOPS denied the petition based on a lack of sufficient evidence relating to her EB-2 claims, which is not adequately related to SCOPS' inaccurate statement. It is not enough to demonstrate errors in an agency's decision; a petitioner must also establish they were prejudiced by the mistakes. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *Molina-Martinez v. United States*, 578 U.S. 189, 203 (2016).

As the Petitioner has not demonstrated she was prejudiced by SCOPS' error, such a lapse in propriety is harmless and is insufficient grounds upon which to base this appeal. Errors can be overlooked when they had no bearing on the substance of an agency's decision. *Aguilar v. Garland*, 60 F.4th 401, 407 (8th Cir. 2023) (citing *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 24 (D.C. Cir. 2022)). The party that "seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Shinseki*, 556 U.S. at 409 (quoting *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943)); *Molina-Martinez*, 578 U.S. at 203. Furthermore, SCOPS did not rely on that determination as a basis to deny the petition, so it is not apparent it played any role in their decision to deny the petition.

And on the final basis the Petitioner relies upon in this appeal, we do not agree with her that SCOPS erred when they halted the adjudication and denied the petition on the EB-2 premise without evaluating her eligibility for an NIW of the job offer requirement. When SCOPS identified one dispositive reason the petition should be denied, they were not required to utilize agency resources to analyze her eligibility on other grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of M-R-M-S-*, 28 I&N Dec. 757, 764 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

As a final note, we observe the Petitioner did not contest SCOPS' exceptional ability determination. First, she did not assert that claim before the agency, and second, by not addressing the issue in the appeal she has waived that issue. *Matter of C-A-R-R*, 29 I&N Dec. 13, 18 (BIA 2025) (finding that any argument a filing party does not raise on appeal is deemed waived).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.