U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37468300

Date: MAY 16, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a childcare professional, 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). She also seeks a national interest waiver of the job offer requirement attached to this classification under section 203(b)(2)(1)(B) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for EB-2 classification as an individual of exceptional ability. 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 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

[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).

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the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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.

Id.

II. ANALYSIS

The Petitioner's proposed endeavor is to contribute to the healthy and happy development of the family nucleus by providing support to parents as primary educators, offering them information and strategies on how to maintain a healthy home environment through the creation of a "Practical Guide" focused on families with young children and children with Autism. This project, called "[redacted]," will teach parents to improve their skills as adults, appreciate their mental and emotional health, organize their time according to their commitments, and establish daily routines at home.

As an initial matter, we agree that the Petitioner has met the eligibility criteria for exceptional ability. The Petitioner holds a bachelor's degree in education, focusing on early childhood, from [redacted]. The record reflects that the Petitioner has over 10 years of experience in early childhood education and as an entrepreneur providing independent services in early education, dedicated to early childhood and family support. She is licensed, furnished evidence of membership in a professional association, and provided evidence of recognition.

The Director denied the petition based on a conclusion that the Petitioner did not establish her eligibility for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. The Director determined that although she satisfied the initial evidence requirements by meeting six of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), the record did not establish that she possesses a degree of expertise significantly above that ordinarily encountered in her field, see 8 C.F.R. § 204.5(k)(2). The Director acknowledged the Petitioner's credentials, experience, and recognition, but found that the Petitioner did not meet her burden to demonstrate that she possesses a degree of expertise significantly above that ordinarily encountered in the sciences, art, or business.

[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).

On appeal, the Petitioner asserts that she submitted sufficient evidence to establish that she is otherwise eligible to be classified as an individual of exceptional ability and that the Director erred in the final merits determination. The Petitioner states that her previous employer acknowledged her for excellent contributions for five years as an indispensable member of the institution, for creating a special program pertaining to the benefits of music in child development, and another employer awarded her a certificate of recognition for excellent performance as a second teacher. She provides numerous recommendation letters from clients and colleagues who benefitted from her services and highlight her impact on the community. She provides links to videos and social media posts documenting her projects, testimonials, and other activities demonstrating her commitment to early childhood education.

Upon de novo review, we adopt and affirm the Director's finding that although the Petitioner met all six eligibility criteria under 8 C.F.R. § 204.5(k)(3)(ii), the record does not establish that the Petitioner has the requisite degree of expertise. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). We agree with the Director's final merits determination. Although the Petitioner met all six of the requisite criteria under 8 C.F.R. § 204.5(k)(3)(ii), the record does not establish that she qualifies for the requested EB-2 classification because the record did not establish that she possesses a degree of expertise significantly above that ordinarily encountered in her field consistent with the definition of exceptional ability as set forth in 8 C.F.R. § 204.5(k)(2).

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence. While the Petitioner submitted evidence of her educational credentials, the mere possession of a degree or diploma from a college or university is not by itself considered sufficient evidence of exceptional ability. The record includes letters from employers. However, the authors do not elaborate on what qualifications are typically possessed among early educators generally or otherwise explain their conclusion that the Petitioner's educational background sets her apart from similarly employed workers. The record does not provide sufficient support for a determination that the Petitioner's degree in early childhood education signifies her possession of expertise that is significantly above that ordinarily encountered in her field.

Although the evidence indicates that she has more than 12 years of work experience in the field, the Petitioner did not demonstrate how her experience relates to other teachers or how it is indicative of a heightened degree of expertise that sets her apart from others. One of the letters from a school where she worked 12 years stated that she performed a series of duties effectively and with good management, however, it is unclear how this establishes her exceptional ability in the field.

As noted, the Petitioner provided evidence of her membership in [redacted]. However, the evidence does not demonstrate, for example, that [redacted] limits its membership to teaching professionals that possess credentials, experience or some other qualifications that would differentiate them as having expertise significantly above that of other teachers. Rather, the evidence suggests that [redacted] is an inclusive association with over 20,000 members from 14 southern U.S. states that is open to individuals who are located within a specific geographic region

and who pay the required membership dues. Therefore, the record does not show that the Petitioner's membership in this association is indicative of her exceptional ability in the field of education.

Finally, although the Petitioner has submitted more than ten reference letters from employers, professional colleagues, and clients, this evidence does not establish that she possesses expertise that places her significantly above other teachers working in her field. As discussed, many of the letters praise the Petitioner for her personal qualities and professional capabilities and address her contributions to her employer and her impact on individual students. Although reference letters state in conclusory fashion that the Petitioner is exceptional in her field, they do not explain whether they conducted some form of independent review of her qualifications and experience.

For the reasons discussed, the Petitioner has not established that she is eligible for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business or as a member of the professions holding an advanced degree.

ORDER: The appeal is dismissed.