U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354389

Date: MAY 21, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources management specialist, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is 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 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. Section 203(b)(2)(B)(i) of the Act.

Exceptional ability in the sciences, arts, or business 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. *See* 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. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[2]

---

[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).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of

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 that they merit 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, 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,[3] 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 proposed to work in the United States as a human resources management specialist through her human resources consulting company, [redacted] as the owner and managing director of the company. The company plans to provide human resources consulting and professional development services to small and medium-sized enterprises in the United States.

As indicated above, the 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. Section 203(b)(2)(B)(i) of the Act. The Petitioner claimed that she qualifies for the EB-2 visa classification as an individual of exceptional ability. The Director determined that the Petitioner does not qualify for the EB-2 visa classification as an individual of exceptional ability because she has not fulfilled at least three of the six criteria listed in the regulations.

On appeal, the Petitioner maintains that she qualifies the EB-2 visa classification as an individual of exceptional ability and contends that the Director did not objectively evaluate all evidence under the preponderance of the evidence standard.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what they claim is "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

---

exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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

As stated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Director determined that the Petitioner established eligibility for this criterion, and we agree. The Petitioner presented her diploma and transcript from [redacted] and a credential evaluation report from Scholaro, Inc. These documents establish that the Petitioner's diploma in human resources management from [redacted] in Brazil is equivalent to the completion of three years of undergraduate coursework towards a bachelor's degree in human resources management in the United States. Therefore, she meets this criterion.

> *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).

The Director determined that the Petitioner did not establish eligibility for this criterion. Upon de novo review, we determine the Petitioner has not submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner provided declarations from her former employers, her resume, and her digital employment record from the Federative Republic of Brazil. The declarations from the Petitioner's former employers indicate that the Petitioner worked as an office assistant for a company from February 12, 2021 to April 30, 2021 (for about two months), as a financial assistant for a company from June 1, 2012 to May 3, 2013 (for about 11 months), as an independent beauty consultant for a company from June 2012 to August 2018 (for about six years and two months), as a customer relationship analyst for a company from May 3, 2021 to August 16, 2022 (for about a year and three months), and as a conservation supervisor for a company from December 1, 2017 to September 10, 2018 (for about 9 months).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires evidence in the form of letters from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the occupation for which they are being sought.[4] The declarations from the Petitioner's former employers indicate that that the Petitioner previously worked as an office assistant, as a financial assistant, as an independent beauty consultant, as a customer relationship analysis, and as a conservation supervisor for a total period of about 9 years and two months. The declarations also do not indicate that this employment was full-time employment. Thus, the declarations do not establish that the Petitioner has at least 10 years of full-time experience in the occupation for which she is being sought. Accordingly, she does not meet this criterion.

[4] *See also* 6 *USCIS Policy Manual*, F.5(B)(2), https://www.uscis.gov/policymanual.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Director determined that the Petitioner established eligibility for this criterion, and we agree. On appeal, the Petitioner submits her professional identity card and a certificate of good standing from the Regional Board of Administration of the Federal District. These documents show that the Petitioner is registered with the Regional Board of Administration of the Federal District as a human resources manager since October 2022 and that this registration is valid until October 2024. The Petitioner also presents Law No. 4769 of September 9, 1965 in Brazil, which provides law relating to the exercise of the profession as an administration technician. Article 14 of the Law No. 4769 states that the lack of registration makes the exercise of the profession as an administration technician illegal. The Petitioner has shown that she is a registered human resources manager. Accordingly, she meets this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Director determined that the Petitioner did not establish eligibility for this criterion. Upon de novo review, we determine the Petitioner has not submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(D).

On appeal, the Petitioner claims that we can verify that her annual income in 2022 from her former employer, [redacted] was above the category average and refers to a declaration from the company. However, the Petitioner's appeal does not include the claimed declaration from [redacted] The Petitioner has not established the claimed fact with unsupported testimonial evidence alone. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (stating that simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings). Moreover, the mere fact that the Petitioner's annual income from her former employer was above the category average does not establish that she has commanded a salary, which demonstrates exceptional ability.

The Petitioner previously submitted her digital employment record from the Federative Republic of Brazil, which was issued in December 2020, her income tax returns from 2019 to 2021, and a salary survey for the head of human resources in June 2021 from the Salaro BR website. The salary survey provides average monthly salaries of the head of human resources in Brazil depending on their professional level as a trainee, as a junior, as a full professional, as a senior, or as a master. The salary survey indicates that the average monthly salary of the head of human resources as a full professional in June 2021 was 3,518.80 Brazilian Real (BRL). The Petitioner's digital employment record indicates that her monthly salary as a business analysis at [redacted] in 2021 and in 2022 was from BRL 2,568 to BRL 4,836.18. The Petitioner's income tax return for 2021 shows that her monthly salary from [redacted] was BRL 189.55 and that her monthly salary from [redacted] was BRL 3,217.09.

The salary survey provides average monthly salaries of the head of human resources. However, the Petitioner offered no basis for comparison showing that her salaries from [redacted] as a business analyst or from [redacted] as an office assistant were indicative of her

claimed exceptional ability relative to others working in the field. The evidence the Petitioner submitted does not sufficiently establish that she has commanded a salary or other remuneration for services, which demonstrates exceptional ability. Therefore, she does not meet this criterion.

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

The Director determined that the Petitioner did not establish eligibility for this criterion. Upon de novo review, we conclude the Petitioner has not submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner claimed eligibility for this criterion based on her registration with the Regional Board of Administration of the Federal District. On appeal, the Petitioner provides her professional identity card and a certificate of good standing from the Regional Board of Administration of the Federal District. These documents show that the Petitioner is registered with the Regional Board of Administration of the Federal District as a human resources manager since October 2022 and that this registration is valid until October 2024. The Petitioner also presents Law No. 4769 of September 9,1965, which provides law relating to the exercise of the profession as an administration technician.

The record does not sufficiently demonstrate that the Regional Board of Administration of the Federal District is a professional association. "Profession" includes, but is not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. As such, a professional association is one that requires its members to hold at least a U.S. baccalaureate degree or the foreign equivalent.

Article 3 of the Law No. 4769 provides that the profession of an administration technician can be exercised by three groups of people: (1) those who graduated in Brazil with a bachelor's degree in public administration, (2) those who graduated abroad with a bachelor's degree in administration, or (3) those who did not graduate but possess five years or more of experience in the field of an administration technician. Because Law No. 4769 does not require a U.S. bachelor's degree or its foreign equivalent to register with the Regional Board of Administration of the Federal District to qualify as an administration technician, the record does not establish that the Petitioner is a member of a professional association. Article 7 of the Law No. 4769 states that the Federal Council of Administration Technicians provides guidance for and disciplines the profession of an administration technician. While the Petitioner provided evidence that she is registered with a government regulatory agency in Brazil to qualify as a human resources manager, she has not demonstrated she is a member of professional associations. Accordingly, she does not meet 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).

The Director determined that the Petitioner did not establish eligibility for this criterion. Upon de novo review, we determine the Petitioner has not submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal, the Petitioner contends that she provided a lecture to female military police officers and public servants in [redacted] 2021 at the invitation of the vice governor of the Federal District and the Military House of the Federal District and that she submitted a declaration from [redacted] from the Officers' Corps of the Military Police of the Federal District. While this declaration indicates that the Petitioner was a speaker at the lecture on creative productivity for women, it does not identify why the Petitioner was selected as a speaker to show that she was invited to provide the lecture at the event because she was recognized for achievements and significant contributions to the field of human resources management.

The Petitioner also claims that her appearance in *Applause* magazine of [redacted] which featured her photo and name, is recognition of her role as an independent sales director of the company and a significant achievement within the company due to her work for carrying on the legacy of the company's founder. Her appearance in the company magazine may support her contributions to her former employer. However, the Petitioner she has not shown that her appearance in the company magazine demonstrates recognition for achievements and significant contributions to the field of human resources management or the sales industry.

The Petitioner previously submitted letters of support from her former colleagues, the preacher of a church where she volunteers as a developer of events, as a teacher, and as a speaker, a fellow volunteer at the church, and her students or mentees. These letters praise the Petitioner as a skilled manager of human resources and as a dedicated and creative professional. These letters also recognize the Petitioner's contributions to her former employer as an assistant in the finance and human resources department. Although these letters establish that the Petitioner's work for her former employers and her volunteer services for a church benefited her employers, students, mentees, and other members of the church, they do not include specific details explaining how performing her job duties for her former employers or providing volunteer services for a church qualifies as recognition for achievements and significant contributions to the field of human resources management. Accordingly, the Petitioner does not meet this criterion.

For the reasons discussed above, the Petitioner has not established by a preponderance of the evidence that she meets at least three of the six regulatory criteria. Because the Petitioner has not established eligibility for at least three of the six criteria, we need not provide a final merits determination as to whether the Petitioner has achieved the level of expertise required for exceptional ability classification. Furthermore, because the issue identified in this decision determines the outcome of the Petitioner's appeal, we need not reach a decision on whether she is eligible for or otherwise merits a national

interest waiver as a matter of discretion under the *Dhanasar* analytical framework. Therefore, we will reserve these issues for future consideration should the need arise.[5]

III. CONCLUSION

As the Petitioner has not established by a preponderance of the evidence that she is a member of the professions holding an advanced degree or an individual of exceptional ability, the Petitioner has not demonstrated eligibility for the EB-2 visa classification. Because the Petitioner has not shown that she qualifies for the EB-2 visa classification, we need not reach a decision on whether she is eligible for or otherwise merits a national interest waiver as a matter of discretion under the *Dhanasar* analytical framework.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[5] *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 alternate issues on appeal where an applicant is otherwise ineligible).