U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38365476

Date: MAY. 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an entrepreneur, 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 record did not establish the Petitioner's qualification for the underlying EB-2 classification or that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification. 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).

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

The six categories of evidence for exceptional ability, listed at 8 C.F.R. § 204.5(k)(3)(ii), include:

(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 remuneration 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.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

If we conclude a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we then evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

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.

[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).

II. ANALYSIS

The Petitioner is an entrepreneur who owns and serves as the chief executive officer for [redacted] "a business consulting and financial advisory firm specializing in assisting foreign investors and small to medium-sized businesses, particularly those owned by Brazilians and other foreign nationals." The Petitioner proposes to maintain and expand [redacted], which offers services including: "business planning, feasibility studies, human resource management, asset management, and cost control." Through her work for [redacted] the Petitioner has served as "general manager – contractor" for several clients.

SCOPS determined the Petitioner is not eligible for classification as a member of the professions holding an advanced degree, as she did not establish she possessed a minimum of five years of post-baccalaureate experience in her specialty at the time of filing. SCOPS also determined the Petitioner did not meet any of the six exceptional ability criteria included at 8 C.F.R. § 204.5(k)(3)(ii). Upon consideration of whether the Petitioner merits a national interest waiver grant, SCOPS concluded that though the Petitioner's proposed endeavor has substantial merit, she has not established its national importance; that she is well-positioned to advance the endeavor; or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of labor certification.

A. Exceptional Ability

On appeal, the Petitioner asserts SCOPS was inconsistent in denying her exceptional ability classification in the denial decision, but not in their preceding request for evidence (RFE). The Petitioner contends the record establishes she meets the criteria for exceptional ability classification and that SCOPS' "inconsistency suggests a misapplication of the adjudicative standard" and a deprivation of "due process rights and fair treatment." As such, the Petitioner requests further consideration of her eligibility on appeal.

The record contains a RFE from SCOPS requesting additional evidence only related to the Petitioner's eligibility for a national interest waiver rather than the underlying EB-2 visa classification. However, we note the Petitioner, in her underlying national interest waiver petition, did not make a claim of exceptional ability. In any case, a RFE is a discretionary request for further evidence from the Petitioner, so does not contain any adjudicative findings. *See* 8 C.F.R. § 103.2(b)(8). Accordingly, the Petitioner's assertion that she was prejudiced by contradictory adjudicative findings in the RFE and denial decision is unpersuasive. Nevertheless, the Petitioner has been afforded the opportunity to support these assertions anew on appeal and we review the issues in this matter de novo.

On appeal, the Petitioner does not claim eligibility for EB-2 visa classification as an advanced degree professional but seeks review of her eligibility for exceptional ability. The Petitioner asserts the record contains "extensive documentation submitted, which demonstrates [her] advanced expertise and significant contributions in their field." The Petitioner contends she has ten years of experience in which she excelled as a general and operations manager, with competencies including "financial analysis, strategic planning, market growth and penetration, commercial agreements, asset management, and customer relationship building."

SCOPS concluded the Petitioner did not meet at least three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). We concur with SCOPS that the Petitioner did not demonstrate eligibility for EB-2 visa classification for the reasons set forth below.

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

SCOPS determined the Petitioner did not establish eligibility for this criterion. The Petitioner submitted documentation related to the filing of [redacted] as an entity. SCOPS found the evidence related to the licensure of the Petitioner's business to be insufficient. as it was issued after the date of petition filing and eligibility must be established at the time of filing under 8 C.F.R. §§ 103.2(b)(1), (12). However, it is not clear that the relevant evidence was submitted after the time of filing, as SCOPS indicates the petition was filed in October 2019 rather than June 2022.

Nonetheless, we do concur with SCOPS that the Petitioner has not met her burden of demonstrating the record contains sufficient license or certification for the Petitioner's particular profession or occupation. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, while not always required to work in an occupation, generally requires demonstrating competency to perform a specific job. The record does not establish the Petitioner submitted any licenses or certification that are required to perform the duties the Petitioner intends to undertake in her proposed endeavor. On appeal, the Petitioner does not address this specific finding and generally asserts her eligibility for exceptional ability based upon her experience and contributions. The Petitioner has not met this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

2. *Evidence in the form of letter(s) from current or former employer(s) showing that the petitioner 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).

SCOPS determined the Petitioner did not establish eligibility for this criterion. The plain language of this criteria indicates the evidence must 1) be in the form of letter(s), 2) be from current or former employer(s), and 3) establish at least ten years of full-time experience in the occupation. 8 C.F.R. § 204.5(k)(3)(ii)(B). The requisite letter(s) must also comply with 8 C.F.R. § 204.5(g)(1), which indicates "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performer by the alien or of the training received." SCOPS acknowledged the Petitioner submitted letters of experience from prior employers and her current company and its clients. However, SCOPS determined these letters did not all fully comply with the regulations and, overall, were insufficient to demonstrate the Petitioner possessed a minimum of ten years of full-time experience in the field upon petition filing.

On appeal, the Petitioner does not address this specific finding, has not submitted additional relevant supporting documentation, and generally asserts her eligibility for exceptional ability based upon her experience and contributions. We note the previously submitted letters of employment verification from [redacted] do not identify the Petitioner's duties or whether she worked full-time, nor contain the requisite identifying elements for the writers. We concur with SCOPS that the Petitioner has not met her burden of demonstrating the record contains sufficient evidence showing she has at least ten years

of full-time experience in the occupation as of the filing date. The Petitioner has not met this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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

SCOPS determined the Petitioner did not establish eligibility for this criterion. SCOPS noted the Petitioner provided financial documentation but found this evidence to be insufficiently detailed to demonstrate her eligibility. We concur with SCOPS that the Petitioner has not met her burden to demonstrate she "has commanded a salary . . . which demonstrates exceptional ability." *Id.* The Petitioner indicates she holds the roles of business owner, chief executive officer, and general and operations manager. The record contains tax documentation for [redacted] the Petitioner and her spouse collectively, and financial obligations from company clients. However, the record does not clearly reflect salary or remuneration for the Petitioner or the salary or remuneration for individuals of exceptional ability performing duties comparable to those the Petitioner intends to undertake. Overall, the record lacks detail and context to determine whether the Petitioner has earned a salary or remuneration that demonstrates exceptional ability, significantly above that ordinarily encountered. In addition, the Petitioner does not address this specific finding on appeal. Accordingly, we concur with SCOPS that the Petitioner has not met this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

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

SCOPS determined the Petitioner did not establish eligibility for this criterion, noting the Petitioner has not provided any relevant documentation. On appeal, the Petitioner does not claim, and the record does not establish, that she meets this exceptional ability criterion. Accordingly, we concur with SCOPS that the Petitioner has not met this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

For the reasons set for the above, the Petitioner does not meet four of the criteria included at 8 C.F.R. § 204.5(i)(3)(ii). As such, the Petitioner necessarily cannot establish she meets at least three of the six criteria, as required to demonstrate her eligibility for exceptional ability.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that she qualified for classification under section 203(b)(2)(A) of the Act as either an advanced degree profession of that she has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. As discussed above, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Because this issue is dispositive of the Petitioner's appeal, we will not reach and hereby reserve the appellate arguments regarding her eligibility for a national interest waiver under the *Matter of Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issue 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).

ORDER: The appeal is dismissed.