U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30681069

Date: MAY 31, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner was in the United States on a student visa when she filed the petition and she plans to become an interior designer in this country. She seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. She further pursues 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).

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner qualified for the underlying visa classification, nor did she merit a discretionary waiver of the job offer requirement in the national interest. 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 establish eligibility for an NIW, 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

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. 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. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

Once a petitioner demonstrates eligibility for the EB-2 classification, 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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. ANALYSIS

A. Eligibility for the EB-2 Classification

The Director determined that the Petitioner was not eligible for the EB-2 classification as a member of the professions holding an advanced degree and evidence of at least five years of progressive post-baccalaureate work in this field. The Director further concluded the Petitioner did not qualify as an individual of exceptional ability. We agree with the Director's conclusion that she does not qualify for the underlying immigrant classification necessary for USCIS to consider whether she warrants a waiver of the job offer requirement.

1. Advanced Degree Professional

The Director acknowledged that the Petitioner holds a three-year degree, but they found her ineligible for this provision because the advance degree professional classification requires a four-year degree. On appeal, the Petitioner argues that the statute does not contain a "requirement that the degree-granting program last four years. Therefore, [her] diploma [] qualifies as a professional degree."

While we agree the statute is not the legal authority that requires the degree-granting program to consist of four years, *Matter of Shah,* 17 I&N Dec. 244, 245 (BIA 1977) does make that a requirement and the Director cited to the *Shah* decision in the denial. We also note that although it is not precedential, a U.S. Circuit Court of Appeals confirmed that *Shah* properly interpreted a U.S. baccalaureate degree to usually require four years of study. *See Viraj, LLC v. U.S. Atty. Gen.*, 578 F.

App'x 907, 910 (11th Cir. 2014). Consistent with *Shah* and *Viraj*, USCIS has long considered a baccalaureate degree as one that requires four years of education.

Despite the Petitioner contesting the Director's overall determination about her degree, she did not address the *Shah* decision or the degree requirements that emanate from it. Based on that shortcoming, we conclude that the Petitioner has forfeited or abandoned their ability to address the four-year degree requirement grounded in the *Shah* decision. *Matter of F-C-S-*, 28 I&N Dec. 788, 789 n.3, 791 n.6 (BIA 2024) (finding issues not challenged on appeal are waived); *Moore v. Harper*, 600 U.S. 1, 36 (2023) (finding that issues not presented to the appellate body are forfeited on appeal).

Setting aside the lack of evidence to demonstrate the Petitioner earned the equivalent of a four-year U.S. bachelor's degree, we also agree with the Director that the letter from V-Y-R-, the co-owner of their business J-S-, does not meet the regulatory requirements to demonstrate she has at least five years of progressive post-baccalaureate experience in the specialty. Even overlooking the Director's concern of V-Y-R-'s position in the organization, the letter does not contain "a specific description of the duties performed by the alien or of the training received." 8 C.F.R. § 204.5(k)(2).

Although V-Y-R-'s letter discusses some of the functions both she and the Petitioner performed in the organization, we cannot discern from the letter that the Petitioner accumulated and performed the duties of an interior designer for at least five years following her attainment of the equivalent of a U.S. baccalaureate degree. We also agree with the Director that a letter from A-S-, one of J-S-'s clients, did not satisfy the regulatory requirements to show she held the requisite amount and type of evidence. Not only was this letter from a client instead of what the regulation requires—from a former employer or trainer—but A-S- described the work that the company J-S- performed rather than the "specific description of the duties performed by the" Petitioner. *See* 8 C.F.R. § 204.5(g). Put differently, what J-S- did for this client does not equate to the Petitioner performing those duties.

Based on our analysis, the Petitioner has not established eligibility for the advanced degree professional immigrant classification.

2. Individual of Exceptional Ability

The Director concluded that the Petitioner offered adequate evidence of an official academic record showing she 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, as required by the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A). However, the Director decided the Petitioner's evidence did not satisfy any of the following criteria and we agree.

> *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).

As evidence under this criterion the petitioner provided two letters. For the first letter from V-Y-R-, the Director indicated it did not discuss the specific projects the Petitioner was involved in, nor did it provide details about her duties or experience. Regarding the second letter from the business' client A-S-, the Director noted it did not specifically address her work but instead provided details about

projects the J-S- studio completed as a business. The Director also addressed statements from the Petitioner's counsel claiming she has more than 10 years of experience in the occupation, but concluded the record did not include evidence to corroborate her attorney's assertions.

Regarding the first letter from V-Y-R-, it is missing key information that the regulation requires. First, she did not state the Petitioner worked full time during their tenure together. Second, she did not state that the Petitioner attained 10 years of experience, as she indicated they ran the J-S- studio together from 2013 to 2022. The Petitioner's appeal brief does not address the second letter and as such, she has abandoned those claims here and in any subsequent proceeding relating to this petition. *F-C-S-*, 28 I&N Dec. at 789 n.3, 791 n.6; *Philipp*, 77 F.4th at 709–10.

The Petitioner has not offered arguments and evidence that satisfies this criterion's requirements.

> *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 did not initially claim eligibility under this criterion and stated as much in the request for evidence. In response, the Petitioner referenced her certificate in interior design and claimed it demonstrated eligibility under this criterion. Before the Director, the Petitioner presented an interior design certificate, and the Director indicated it did not establish that the profession requires a license or certification. In turn, the Director declined to grant this criterion to the Petitioner.

Within the appeal, the Petitioner argues that certificates do not generally state requirements of the profession for which they are issued, and that the purpose of the certificate is to establish the Petitioner's training and credentials for potential clients. She then surmises that the Director erred in concluding she did not meet this criterion.

But it is the Petitioner that commits error on appeal in two ways. First, by not explaining how the Director's determination was incorrect. And second, she did not illustrate how the previously submitted evidence satisfies this criterion's requirements. The certificate in question merely reflects the Petitioner completed her studies at the advanced course of the Preparatory Department at the [redacted] The Petitioner has not provided "a license to practice the profession" or a "certification for a particular profession or occupation" as contemplated by the regulation.

The Petitioner has not submitted evidence that meets the requirements of 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).

Before the Director, the Petitioner relied on a statement in the letter from V-Y-R-, her own bank statements from 2021, evidence of the salary statistics for "designers" in Russia. In the Director's decision, they acknowledged the letter from V-Y-R- but found that it was did not sufficiently elaborate on what she specifically meant when she stated the Petitioner made significant contributions to the business. The Director also noted a lack of payroll records to support the Petitioner's claims that her

banking records represented her compensation from the business. In the appeal, the Petitioner essentially restates their previous claims relating to this criterion.

We begin with the letter from V-Y-R- in which she indicated that the organization was "able to carry out many successful interior design projects" and that they "receive[d] payment for their work, which was higher than the average payment in our field." As the Director noted, such simple statements are not enough here. We agree that V-Y-R-'s unsupported and subjective statements have no evidentiary value and will not satisfy the Petitioner's burden of proof. *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).

Next, we address the Petitioner's banks statements. The Director noted that the Petitioner did not prove what amount of the funds, or if any, were attributable to the Petitioner's salary or other remuneration in exchange for her interior design services for the company J-S-. We agree, and the Petitioner makes no effort to overcome that conclusion on appeal. We therefore consider this topic to be waived here. *F-C-S-*, 28 I&N Dec. at 789 n.3, 791 n.6.

Finally, we will discuss the salary statistics evidence. The Petitioner claims this evidence originated from GorodRabot.ru and it represented the average monthly salary for "designers" was 49,128 Russian Rubles. First, although the documentation makes a reference to GorodRabot.ru, it lacks any identifiers that would reveal the source of this evidence. This tends to diminish the value of the evidence as it leaves us unable to verify the accuracy of the data with the original source. Second, the document only reflects that the salary statistics relates to "Designers," and it is unclear to what type of designer the salary information applies. In fact, the material's final page had a section titled "Recommended vacancies," and it contained a job announcement for a web designer and a separate one for a graphic designer. This further undermines this evidence's value as it does not demonstrate the salary data relates to interior designers in Russia.

Lying just beneath our above analysis is the deleterious issue that the Petitioner provided claims and evidence relating to interior design workers—as in employees of a company—instead of those in her situation as a co-owner of an interior design company. She did not provide any supporting materials reflecting salaries or other remuneration for those who operate interior design businesses. To satisfy this criterion, the evidence must show that the Petitioner has commanded a salary or remuneration for services that is indicative of her claimed exceptional ability *relative to others working in the field*. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2). It is indisputable that owners of an interior design company, even those who might carry out interior design duties, are likely to perform work distinct from interior design employees.

In the end, the Petitioner offered claims that lacked necessary corroboration, and evidence that she did not prove was directly derived from her interior design work, other material that may—or may not—be associated with interior designers, and she ultimately did not provide evidence that was a proper comparison to her previous work. For all these reasons, we agree with the Director that the Petitioner has not satisfied her evidentiary burden to establish she meets 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).

Under this criterion, the Director acknowledged the Petitioner's award and letters she submitted for the record. The Director noted a lack of details and supporting documentary evidence to substantiate the claims within the letters and concluded they did not show the Petitioner received recognition for achievements and significant contributions to the industry or how her work had impacted the field.

Now in the appeal, the Petitioner asserts the two letters in the record show she "has played a key role in the successful completion of interior design projects." She further indicates the letters reflect "she has made significant contributions to projects" and she "continues to amaze her colleagues with ideas and fresh perspective which indicates she has a unique and valuable perspective that is appreciated by others in the industry." She further posits that the letters emphasized her "high professional qualities and potential, stating that she has 'extraordinary abilities' and can contribute to the future of U.S. architecture and design."

We observe that the regulation requires recognition for achievements and significant contributions—not to individual projects or to a business in general—but to "the industry or field." 8 C.F.R. § 204.5(k)(3)(ii)(F). While the letters the Petitioner provided contain general praise for her expertise and abilities, they do not indicate that her achievements and significant contributions extend to the industry or field.

For example, V-Y-R- only expressed benefits to their company and their projects, but she did not describe any impact the Petitioner had on the interior design industry or field. Similarly, in the letter from A-S- we reiterate our above analysis in which this letter's author primarily focused on the company itself and on his projects where the company performed work to their satisfaction. But nothing specifically about the Petitioner's work, nor about how she may have impacted the industry or the field. In summary, the Petitioner has not met this criterion's evidentiary requirements.

In light of the above analysis, the Petitioner has not met her burden of proof to show that she qualifies for EB-2 classification, either as a member of the professions holding an advanced degree or as an individual of exceptional ability. Because the Petitioner does not qualify for EB-2 classification, by extension she cannot qualify for the national interest waiver, and a detailed discussion of her waiver claim cannot change the outcome of this appeal.

As a result, we will not address and we reserve the issue of the Petitioner's eligibility for the national interest waiver under the *Dhanasar* framework. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.