U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34224466

Date: NOV. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an administrative services manager / 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).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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.[2] 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

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

substantially benefit 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. 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

A. Exceptional Ability

The Petitioner has not claimed or demonstrated eligibility as a member of the professions holding an advanced degree. Therefore, to qualify for EB-2 classification, she must show that she is an individual of exceptional ability. In denying the petition, the Director determined that while the Petitioner fulfilled three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), she had not established that she possesses a degree of expertise significantly above that ordinarily encountered in the field in a final merits determination. In doing so, the Director noted that although the Petitioner had presented evidence of a professional license in support of the criterion laid out in 8 C.F.R. § 204.5(k)(3)(ii)(C), the record lacked independent objective evidence to establish the relevance and significance of that membership. Additionally, the Director noted that meeting the minimum requirements for initial evidence was not sufficient to show exceptional ability under section 203(b)(2)(C) of the Act.

On appeal, the Petitioner argues that she has shown that she is eligible for EB-2 classification and that she merits a discretionary waiver of the job offer requirement. Regarding the former, the Petitioner asserts that she meets at least five of the six regulatory criteria for classification as an individual of exceptional ability. The Petitioner contends that she submitted evidence in support of her eligibility for these criteria in a response to a request for evidence by the Director. She claims that that the statements she has submitted by experts in her field attest to her exceptional abilities. Specifically, she asserts that she meets the requirement for 8 C.F.R. § 204.5(k)(3)(ii)(F) for recognition of her achievements and significant contributions as well as ten years of work experience in the occupation under 8 C.F.R. § 204.5(k)(3)(ii)(B).

[3] *See 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).

We agree with the Director's determination that the Petitioner has established that she meets the initial evidentiary requirement by establishing three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii). Accordingly, we need not consider whether she also meets additional criteria as argued on appeal. We will instead consider the balance of the record to determine whether the Petitioner has shown she has a degree of expertise significantly above that ordinarily encountered in the field and is therefore eligible for the requested classification.

The Petitioner argues on appeal that her submissions of statements from experts in her field demonstrate that she is an individual of exceptional ability under section 203(b)(2)(A) of the Act. Before the Director, the Petitioner provided three letters attesting to her employment history. She submitted an affidavit from [redacted] confirming the Petitioner's employment from October 2015 to January 2016 as an administrative assistant and described her activities as customer service, billing and negotiation, research, and document filing. The Petitioner also provided a letter from [redacted] confirming her employment between August 2013 and August 2014, describing her duties as a logistics support assistant. Additionally, she offered a letter from a colleague at [redacted] who refers to her employment there from February 2011 to February 2021.

Further, the record contains support letters from the Petitioner's professional associates, including a supervisor and colleagues. The Petitioner also submitted a letter from [redacted] an associate professor of marketing at [redacted] asserting that the Petitioner met the requirements for a national interest waiver. The author contended that although they did not know the Petitioner, their letter was offered as an independent opinion. The letter stated that the Petitioner played a pivotal role in carrying out her administrative activities in her role [redacted] and described her responsibilities in this position. The letter went on to describe her duties at other employers, asserting that her role at [redacted] as critical.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability. It is a petitioner's burden to prove by a preponderance of evidence that they are qualified for the benefit sought. *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). Contrary to her assertions on appeal, the record does not contain sufficient objective evidence of her recognition of her achievements and significant contributions to her field. The testimonial evidence in the record, such as the recommendation letters from supervisors and colleagues, stated that the Petitioner performed her assigned job duties effectively and was an effective, proactive professional. They did not assert that her performance of these duties nor her achievements go beyond what is normally encountered in her field. Although the support letter from a university professor claims to be an independent opinion, it does not indicate that the Petitioner is recognized outside of her specific employers, nor does it elaborate why her past roles have been pivotal or critical, as claimed. Therefore, the evidence submitted by the Petitioner does not establish that she has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[4]

[4] *See also* 6 *USCIS Policy Manual*, *supra*, F.5(B)(2).

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that she is an advanced degree professional or that she has achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she has attained a level of expertise required for classification as an individual of exceptional ability. 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.