U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39505116

Date: SEPT. 25, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is a software developer who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as 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).

SCOPS denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that 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 matter is now before us on appeal under 8 C.F.R. § 103.3. 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 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 the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[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).

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 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. EXCEPTIONAL ABILITY

The Petitioner earned her bachelor's degree in computer science and soon afterwards began working as software engineer at [redacted], Inc. [redacted].

A. Eligibility for the EB-2 Classification

SCOPS determined that the Petitioner was not eligible for the EB-2 classification as an individual of exceptional ability. SCOPS found the Petitioner only met two of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) when the regulation mandates she meet at least three criteria. They found favorably under the criteria relating to her official academic record (8 C.F.R. § 204.5(k)(3)(ii)(A)), and her compensation (8 C.F.R. § 204.5(k)(3)(ii)(D)), but made adverse determinations relating to her years of experience ((8 C.F.R. § 204.5(k)(3)(ii)(B)) and her recognition for achievements and significant contributions to the industry or field (8 C.F.R. § 204.5(k)(3)(ii)(F)). SCOPS then mistakenly indicated she met at least three criteria and offered an abbreviated analysis stating her evidence was insufficient to establish she was an individual of exceptional ability and that she possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

On appeal, the Petitioner argues that she does meet the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), as well as the final merits determination showing she possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

1. *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 plain language of this criterion requires that the Petitioner establish she has received recognition for "achievements and significant contributions to the industry or field." As such, materials that

[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).

identify an individual's achievements but not significant contributions to the industry or field will not satisfy the regulatory requirements. Under this requirement, the Petitioner stated that she satisfied this criterion through letters and information about various projects she has pursued. And as we previously noted, SCOPS made an adverse decision for this requirement.

Within the appeal, the Petitioner claims her achievements far exceed the baseline requirements expected of software developers. She also claims her work goes beyond benefitting her employers and that her work has been integral to advancing methodologies and innovations that have garnered significant and ongoing interest in the field. To support these statements, she identifies letters that are already in the record, and other forms of recognition.

Pertaining to the letters, SCOPS indicated their correspondence reflected that her work was of value, but none provided meaningful details or corroborative evidence about the Petitioner's achievements, significant contributions to the field, or influence in the field. A review of the identified letters does not support the Petitioner's claim that she has satisfied this criterion.

We begin with the letter from [redacted], an assistant professor at the [redacted]. In the appeal, the Petitioner states the professor "recognized that '[the Petitioner] is a leading innovator in social media data transparency, and her work has already begin to transform how researchers and policymakers understand the role of social media to play for public health.'" Aside from this statement, the professor described some of the Petitioner's work and its advantages, but she did not explain how that contribution to the field was significant. The professor also described how the Petitioner's infrastructure will enable public-health authorities and scholars to detect and counteract what she characterized as harmful narratives on social media before they reach critical mass. She describes various ways the Petitioner's work could be used in the future, but not how her achievements have already resulted in significant contributions to the field.

While this correspondence shows promise in the Petitioner's work, it does not establish how it already qualifies as achievements and significant contributions in the field, rather than prospective, potential contributions. The significant nature of her work has yet to be determined or measured. This regulatory criterion requires petitioners to show they have received recognition for already realized achievements and significant contributions to the industry or field. A Petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the Petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). And the other cited letters describe the work she has performed, and some of the resulting contributions and benefits, but they too convey the impact in the field as prospective and are not "[e]vidence of recognition for achievements and significant contributions to the industry or field" that have already materialized. This evidence does not establish that, as of the priority date, the Petitioner had contributed to her field in a significant manner as required by the regulation.

The Petitioner also references letters from U.S. congresspersons and she claims they directly refer to her when discussing some of the efforts [redacted] led from 2020–2024. But a review of the letters reveals no mention of the Petitioner when the senators and representatives discuss the work [redacted] performed.

And finally, the Petitioner notes that her achievements are acknowledged in leading journals, and has been adopted by institutions globally. As support she refers to the number of times the U.S. 2020 [redacted] and [redacted] Election Study was downloaded. The Petitioner provided a performance review that made a vague reference to the study but did not detail at what level she was involved in the study, nor did it reflect that she played a significant role in it.

Ultimately, when considered individually or collectively, the Petitioner's claims and documentation are not evidence of recognition for achievements and significant contributions to the industry or field.

The Petitioner has not provided sufficient evidence to meet the regulatory requirements at 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). As the Petitioner has not established she is qualified for the EB-2 classification as an alien of exceptional ability, she has failed to satisfy the antecedent requirement for consideration of an NIW. Although the Petitioner asserts on appeal that she meets additional NIW eligibility requirements under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. Where a case warrants a denial regardless of other eligibility considerations, it is unnecessary that we address those other considerations. *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 Yajure Hurtado*, 29 I&N Dec. 216, 229 n.8 (BIA 2025) (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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.