U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34692001

Date: SEP. 29, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a supply chain manager, seeks employment-based second preference (EB-2) immigrant visa classification as an individual of exceptional ability and 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).

SCOPS denied the petition, concluding the Petitioner had not established eligibility for the requested EB-2 classification and for a waiver of the required job offer, and thus of the labor certification. 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 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:

> (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 renumeration 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.

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.

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,[1] 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 indicates that she has worked in a variety of capacities as a supply chain manager and entrepreneur and intends to establish a transport and logistics management company in the United States. SCOPS denied the petition, concluding, in part, that the Petitioner had not established her qualification for the underlying EB-2 classification. SCOPS found that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), regarding a degree or diploma relating to the area of exceptional ability and ten years of full-time experience in the occupation sought. However, the record did not show the Petitioner's membership in a professional association or that she had received recognition for achievements and significant contributions to her field per the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F).

[1] *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).

On appeal, the Petitioner asserts that SCOPS erred by applying a stricter standard of proof than permissible, disregarding relevant evidence, and imposing novel substantive and evidentiary requirements. She asserts that the record establishes by a preponderance of the evidence her eligibility for a national interest waiver.

With respect to the standard of proof in this matter, 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). Here, SCOPS properly analyzed the Petitioner's documentation and weighed the evidence to evaluate whether she had demonstrated, by a preponderance of the evidence, that she established her eligibility. Further, the record supports SCOPS' determination that the record lacks sufficient evidence to demonstrate the Petitioner's eligibility for the benefit sought.

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

The Petitioner contends on appeal that her membership in the Brazilian Logistics Association meets this criterion and asserts that previously submitted evidence is sufficient to demonstrate her eligibility. In denying the petition, SCOPS noted that the Petitioner's membership certificate, dated June 1, 2023, was insufficient to demonstrate eligibility at the time of filing her petition on January 13, 2022. A petitioner must establish eligibility for the benefit she is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49. Here, the Petitioner does not provide additional evidence or information on appeal to show SCOPS erred in the determination that the record did not demonstrate her eligibility at the time she filed her petition. Accordingly, the Petitioner has not overcome SCOPS' determination that she did not satisfy 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 Petitioner contends on appeal that the previously submitted expert opinion and support letters demonstrate her eligibility for this criterion. She argues that the letters from individuals and organizations in the industry recognize and acknowledge the Petitioner's achievements and significant contributions; serve as testimonials of her impact and success in the field; and provide clear evidence of recognition and endorsement from peers, professionals, and business entities. In denying the petition, SCOPS found that while the support letters speak highly of the Petitioner's skills in the workplace and describe instances of her positive work performance, they did not describe achievements that could be described as significant contributions to the industry or field.

Here, the record includes recommendation letters from multiple individuals discussing her professional experience, skills, and abilities. For example, the writers discuss the Petitioner's work with [redacted]

[redacted], where she assisted with tasks such as managing logistics, shipments, and transport processes, and her contributions as an intern with a medical clinic. The Petitioner also provided an expert opinion letter from an associate professor of business administration at [redacted] who notes that he has never worked with the Petitioner. The writer discusses the Petitioner's "performance in the field of logistics, transportation, and operations management" and indicates that the Petitioner is "a respected leader among her contemporaries"; she "has in-depth experience in business logistics and operations"; and she "has been accountable for developing, and implementing, activities that improve business outcomes."

Upon review, the submitted evidence is insufficient to establish recognition for the Petitioner's achievements and significant contributions to the supply chain and logistics field. Although the letters discuss the Petitioner's work experience and acknowledge her abilities and professional acumen, the evidence does not include specific, detailed information to show that her work has had an impact beyond her employers and their customers at a level indicative of achievements and significant contributions to the industry or field. Further, though the Petitioner asserts on appeal that she has also provided notable awards as substantial evidence of her extensive experience and expertise in the field, the record lacks documentation to support this assertion. We acknowledge the previously submitted certificates that reflect the Petitioner completed certain courses applicable to her field and received a performance-based bonus from her employer. However, this evidence is insufficient to show that the Petitioner has been recognized for significant contributions which have impacted the supply chain and logistics field. Accordingly, the Petitioner has not overcome SCOPS' determination that she did not satisfy this criterion.

The record supports SCOPS' determination that the Petitioner has not established her eligibility as an individual of exceptional ability. The Petitioner has not submitted the required initial evidence of documents that meet at least three of the six criteria, and we therefore need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i). Because the petition cannot be approved without an underlying determination that the Petitioner qualifies for EB-2 classification, we will reserve discussion of the Petitioner's national interest waiver claim under the *Dhanasar* framework.[2]

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.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not required to make findings on issues that are unnecessary to the ultimate decision); *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).