U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-K-

DATE: AUG 2, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an interior designer, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established she qualified for classification as a member of the professions holding an advanced degree.[1]

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for the EB-2 classification and for a national interest waiver.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

To establish eligibility for a national interest waiver, 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

[1] The Director did not make a finding regarding the Petitioner's claimed eligibility as an individual of exceptional ability.

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[2] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the three prongs of the framework are met.[3]

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[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented her "Bachelor in Industrial Design" degree (March 1997) from [redacted] University in Brazil, an English language translation of her academic record (school transcript) from that university, and a credentials evaluation from [redacted] indicating that the aforementioned degree is the foreign "equivalent of the U.S. degree of Bachelor of Science in Industrial Design earned at a regionally accredited institution of higher education in the United States."[4] While the Petitioner submitted an English language translation of her academic record from [redacted] University, she did not present a copy of the original document in Portuguese. The Director's decision stated that a credentials evaluation "should be accompanied by documentary evidence of the contents of its evaluation." On appeal, the Petitioner resubmits the English language translation of her academic record from [redacted] University rather than the original document in Portuguese. Without a copy of the original academic record, the evidence is not sufficient to show that the Petitioner holds the foreign equivalent of a U.S. baccalaureate degree.

Furthermore, the Director determined that the evidence was inadequate to demonstrate that the Petitoner has at least five years of progressive post-baccalaureate experience in her specialty. According to the Petitioner's Form ETA-750B, Statement of Qualifications of Alien, she has worked both as an "independent interior designer" from January 2004 until January 2018 and as "owner" of [redacted] a girls clothing store, from May 2009 until January 2018. As evidence of her work experience, the Petitioner offered a March 2017 letter from her accountant, [redacted], stating that he "worked for [the Petitioner] for more than 11 years, when she was working as an Interior Designer in Brazil."[5]

With the appeal, the Petitioner presents a November 2018 letter from [redacted] asserting that he has "provided her with accounting services over the last 12 years" and that "she has over 12 years of progressive work experience" "performing professional interior designing services." The aforementioned letters from [redacted], however, do not indicate how the Petitioner divided her time between her running her clothing store and working as an interior designer, or specify the amount of time she devoted to interior design projects during the period he worked for her. Nor do his letters sufficiently explain how her work experience was progressive.

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[4] The record also contains a "Career Assessment and Analysis" from USA Evaluations stating that the requirements for the Petitioner's coursework relating to her Bachelor in Industrial Design degree were "subtanially similar to those required toward the completion of a Bachelor of Industrial Design from an accredited insitituion of higher education in the United States."

[5] [redacted]s March 2017 letter discussed the Petitioner's income, but did not provide any further information about her work experience as an interior designer.

In addition, the record includes a November 2018 letter from [redacted] Director of [redacted] stating that the Petitioner "worked with our company as an Independent Interior Designer from January 1997 to February 2005" on "some of our buildings and directly with the buyers of the units we sold." [redacted] further indicates that the Petitioner was "responsible for choosing decoration and design projects in the common areas," developing "partnerships with architects and landscapers," researching interior and exterior "trends of decoration," and suggesting "styles for the proposed spaces," but does not specify the amount of time for which she billed his company during the above period, nor explain whether her interior design services were continuous, part-time, or full-time. Moreover, he does not discuss how the Petitioner's work experience as an interior designer was progressive.

The Petitioner contends that the "Career Assessment and Analysis" she submitted from USA Evaluations proves that she qualifies as a member of the professions holding an advanced degree.[6] This evaluation states that it "relie[d] upon the diplomas, transcript, and resume provided by [the Petitioner]." The representations made in the Petitioner's resume, however, are not sufficient to demonstrate that she has at least five years of progressive post-baccalaureate experience in interior design. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) specifies that that evidence of the progressive experience must be "in the form of letters from current or former employer(s)." Further, the regulation at 8 C.F.R. § 204.5(g) provides, in pertinent part:

> Evidence 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 performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

Here, the Petitioner presented two letters from her accountant indicating that she has more than 11 years of interior design experience, and a letter from [redacted] a former client, offering a brief description of her duties and noting that she performed services for his company from January 1997 to February 2005. As required under 8 C.F.R. § 204.5(k)(3)(i)(B) and (g), we must rely on documents from her former employers in determining her years of experience in interior design. Without further information and evidence from [redacted] or any other entities that employed her services, the documentation in the record does not offer sufficient information to demonstrate that she has at least five years of progressive post-baccalaureate experience in interior design to constitute the equivalent to an advanced degree in that specialty. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the record supports the Director's determination that the Petitoner has not established that she qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

In addition to seeking classification as a member of the professions holding an advanced degree, the Petitioner contends that she is eligible for classification as an individual of exceptional ability. We

[6] This evaluation concludes that the Petitioner has the foreign equivalent of a U.S. baccalaureate degree and "a minimum 5 years professional experience" in interior design.

note that the Petitioner's documentation accompanying the petition listed the regulatory criteria for individuals of exceptional ability and that she provided evidence relating to all six of those criteria: 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F). She also claimed eligibility based on comparable evidence under the regulation at 8 C.F.R. § 204.5(k)(3)(iii). In her appeal brief, the Petitioner maintains that she meets the aforementioned regulatory criteria. The Director's decision did not address whether the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) or has provided sufficient comparable evidence, and has achieved the level of expertise required for exceptional ability classification.

C. 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. The Director did not analyze or make a finding on this issue.

III. CONCLUSION

We are therefore remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for classification as an individual of exceptional ability. In addition, the Director should apply the *Dhanasar* analytical framework to make a determination as to whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of R-K-*, ID# 3818977 (AAO Aug. 2, 2019)