U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17322681

Date: SEP. 14, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a labor relations consultant, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, 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 petition, concluding that although the Petitioner qualified as a member of the professions holding an advanced degree, the record did not establish the substantial merit or national importance of the proposed endeavor. On appeal, the Petitioner submits a brief and additional evidence to assert that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), 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:

> (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.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

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.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

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 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[2] 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.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

Although the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, we hereby withdraw this finding and conclude that the Petitioner has not met her burden in this regard. In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

Although the Petitioner did not provide any evidence that she holds a bachelor's or undergraduate degree, the record contains general academic information stating that in Ukraine, a bachelor's degree or other "first level of higher education" is required before pursuing either a "specialist diploma" or a "master diploma." The Petitioner provided copies of her specialist and master diplomas, along with a list of the courses and her grades within each program. She also submitted an academic equivalency evaluation containing the following conclusions concerning the U.S. equivalency of her Ukrainian education.

Claimed Ukrainian Education	**Evaluator's** Conclusions on U.S. Equivalency
One-year graduate program in jurisprudence, resulting in a Specialist Degree	31 credits of graduate study in Ukrainian law
One-year graduate program in law, resulting in a Master Degree and qualification as a lawyer	Master's degree in law
Candidate for Juridical Sciences degree	Doctoral degree in juridical sciences

We note that the academic equivalency evaluation does not contain an analysis of any undergraduate education, nor does it contain any information on the duration of the Petitioner's doctoral studies. The evaluation listed courses for the Petitioner's specialist and master diploma programs and assigned each course a number of academic credits "in terms of U.S. courses, semester credit hours and grades."

[1] 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).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

However, the evaluation does not contain sufficient information to substantiate how the courses and academic hours are actually equivalent. For instance, among the Petitioner's courses are those entitled "Higher Education I 'The Bologna Process'" and "Fire Training." The evaluation contains no explanation or analysis for what these courses involve, how they would be equivalent to any U.S. course, or how such courses would fit within a U.S. graduate program in law.

Additionally, we have little information concerning how the evaluator arrived at his conclusions about the credits earned for each course. For instance, the Petitioner submitted a specialist diploma course list that states she earned 108 academic hours in Special Physical Education and 36 academic hours in Fire Training. Not only has the evaluator not explained how academic hours translate to credits, he has also not explained how 108 academic hours and 36 academic hours are both worth an equal number of credits. We cannot ascertain how the evaluator arrived at his conclusion that the academic hours for both these courses are worth 0.5 credit hours each when there appear to have been many more academic hours spent in physical education than in fire training. Due to the the lack of explanation for the course content equivalencies, as well as the unexplained correlation of academic hours to credits, we question the credibility of the evaluation.

In addition, we question the evaluator's overall conclusions concerning the equivalency of the Petitioner's education. In order to practice law in the United States, students must generally complete a four-year bachelor's degree program, along with three years of law school, followed by successfully passing a state bar examination. Here, the evaluator concluded that the Petitioner was awarded the "qualification of lawyer" after her master diploma program. Based on the academic records provided, the Petitioner's professional status after completing a specialist diploma program was the permission to "work in a speciality," which is the same professional status she received after completing her master diploma program. Therefore, we cannot ascertain whether the Petitioner was eligible to practice law in Ukraine after only 31 credit hours of graduate study and if so, how this would indicate a level of education equivalent to that which is required in the United States for the same profession. The evaluation offers little clarity in this matter.

According to the information provided concerning the education system in Ukraine, 60 to 90 ECTS credits are required for a specialist diploma, while 60 to 120 ECTS credits are required for a master diploma. The academic documentation in the record indicates that the Petitioner completed 52 ECTS credits for her specialist diploma and 40.5 ECTS credits for her master diploma. Neither the academic equivalency evaluator nor the Petitioner has acknowledged or explained why the Petitioner's ECTS credits appear to fall short of the stated requirements for both degrees. It is not apparent how the Petitioner advanced from a specialist program to a master program and then onward to her "candidate of sciences" doctoral program without the requisite amount of ECTS credits.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Because the evaluator offered little evidence to conclude that the content of the Petitioner's courses is equivalent to a U.S. education, nor has he provided an adequate or consistent analysis of the credit hours earned, we conclude that this evaluation is of little probative value in this matter.

On her résumé and ETA 750 Part B, the Petitioner claimed the following education:

- Bachelor of Law degree, earned from study between September 2004 to June 2007;
- Specialist Degree in Law, earned from study between September 2007 to June 2008;
- Master Degree in Law, earned from study between September 2008 to July 2009; and
- Ph.D. in Juridicial Sciences, earned from study between September 2009 to January 2014.

To evidence her doctoral study, the Petitioner submitted academic documentation that included a diploma of candidate of sciences, awarded in January 2014, along with a certificate that she passed her candidacy examinations. She also provided information about the education system in Ukraine, which states that a "Candidate of Sciences, scientific degree" is considered a doctoral course of studies and requires three or more years of study. We conclude that the Petitioner has not provided sufficient evidence to establish that she has a doctoral-level education in Ukraine, particularly as the documentation in the record substantiates only three courses in her candidate of sciences program: one in 2009 and two in 2011. We have little information to substantiate a finding that the Petitioner underwent three or more years of study in accordance with Ukranian education requirements. The record also contains insufficient documentation to substantiate the Petitioner's claims that she underwent a program lasting from September 2009 to January 2014. Even if the record substantiated a finding that the Petitioner completed a doctoral program in Ukraine, this evidence alone would still be insufficient to conclude that the education is the equivalent of a U.S. doctoral-level education.

While the record supports a finding that the Petitioner has some level of education, it is currently insufficient to persuasively establish that her education is the equivalent to a particular degree or level of education in the United States. Even if we were to conclude that the Petitioner has at least a bachelor's degree in the specialty, the evidence of record would still be insufficient to establish eligibility as an advanced degree professional. We conclude that the Petitioner has not provided evidence in the form of letters from current or former employer(s) sufficient to show that she has at least five years of progressive post-baccalaureate experience in the specialty. We acknowledge the letter from [redacted] of the [redacted]," however, this letter indicates that the Petitioner has less than one year of work experience.

Due to the evidentiary deficiencies described above, the record does not persuasively establish that the Petitioner is a member of the professions with an advanced degree.

B. Exceptional Ability

The Petitioner alternatively asserted her eligibility as an individual of exceptional ability. As discussed below, a review of the record indicates that the Petitioner does not meet at least three of the relevant evidentiary criteria.[4]

[4] While we may not discuss each piece of evidence individually, we have reviewed and considered each one. In general, we note that the record contains many printouts and translations of written work, often without sufficient explanation as to how the documentation relates to the underlying classification criteria or the Dhanasar prongs. Eligibility for the benefit sought is not determined by the volume of evidence alone but also by the quality. Chawathe, 25 I&N Dec. at 376 (citing Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989)). It is always the Petitioner's responsibility to ensure the record demonstrates how she qualifies for a national interest waiver. Section 291 of the Act, 8 U.S.C. § 1361.

> 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. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The evidence is insufficient to conclude that the Petitioner completed education that is the equivalent of a U.S. degree. However, the record adequately shows that the Petitioner has earned a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. Accordingly, the evidence establishes that the Petitioner satisfied this criterion.

> 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)

We return to the letter from [redacted] which states that the Petitioner worked in the legal department of [redacted] from June 2014 to March 2015. Although the Petitioner listed additional employment experience on her Form ETA750 Part B, some of which may have been obtained prior to the filing of the petition, the record contains no other letters from current or former employer(s) evidencing her work experience in the occupation. Accordingly, the evidence does not support a finding that the Petitioner has at least ten years of full-time experience in the occupation of labor relations consultant.

> 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 Petitioner has not submitted evidence that she possesses a license to practice the occupation. Further, the Petitioner has not submitted evidence to support a finding that a license is required to practice the profession of labor relations consultant. In fact, her academic documents indicate that the mere completion of education qualifies her to work in a speciality, which suggests that a license is not required. Accordingly, the Petitioner has not satisfied 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)

We once again acknowledge the letter from [redacted] which states that during her employment at [redacted] the Petitioner earned a salary of 10,000 Ukrainian hryvnia (UAH) per month. We also reviewed the Petitioner's employment contract with [redacted] which contained the same salary figure. In addition, the Petitioner submitted website and article printouts containing Ukrainian salary data for lawyers during years 2014-2015, currency conversion information, Ukrainian cost of living statistics, national salary averages, and general economic analysis. The 2014 salary statistics specific to the law profession were categorized by geographic region in Ukraine and contained the following conclusions: (1) the lawyer profession is highest paid in the [redacted] Region with an average salary of 15,000 UAH, followed by the [redacted] Region and the [redacted] Region; (2) the profession of lawyer is the highest paid in the city of [redacted] at 10,000 UAH; and (3) real estate lawyers are the highest paid at 35,000 UAH, followed by civil lawyers at 18,000 UAH, and copyright lawyers at 18,000 UAH.

Although the Petitioner asserted that she has received the highest possible compensation for her professional abilities, we conclude that the evidence of record does not support such a conclusion. The Petitioner has not provided salary data for the specific Ukrainian region in which she worked, nor does the evidence of record suggest that her salary was high within the profession. Finally, the Petitioner offered no evidence that she actually earned any salary for her claimed employment. The record contains no tax documentation, pay stubs, or bank statements to corroborate that Techkomv or any other employer actually paid the Petitioner a salary. Even if this information had been provided, it would still be insufficient to satisfy eligibility under this criterion. To satisfy this criterion, the evidence must show that the Petitioner "has commanded a salary or remuneration for services that is indicative of his or her claimed exceptional ability relative to others working in the field." 6 USCIS Policy Manual F.5(B)(2). As such, earning a higher salary than others in a specific profession does not in itself establish that such a salary demonstrates exceptional ability.

For the foregoing reasons, the Petitioner has not satisfied this criterion.

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

The Petitioner has not submitted evidence that she is a member of a professional association. Accordingly, the evidence does not establish that the Petitioner satisfied 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)

Returning to the letter from [redacted] of [redacted], we note that the author claimed that the Petitioner is "a specialist" and that she "had the information about employment policy in the company and made the correct interpretation of legal acts helped to avoid time-consuming and significant issues, which influenced on economic growth of the company" (errors in the original). The author did not offer specific examples or detail of what legal interpretations the Petitioner made, what time-consuming issues that the company avoided as a result of the Petitioner's work, or how the Petitioner's work influenced company growth. Accordingly, this letter provides insufficient detail to substantiate the author's claims, much less a finding of recognition for achievements and significant contributions. In addition, even if the author provided sufficient details to support such a finding, the achievements and significant contributions would appear to have benefitted [redacted] alone, rather than the industry or field as a whole.

Although, Professor [redacted] of [redacted] University stated that the Petitioner made "scientific achievements in the field of law," his letter does not support such a finding. The Professor described how the university invited the Petitioner to give a lecture "as an expert in matters relating to the protection of human rights" and that she raised topics that have preoccupied society, including the relationship between patients and doctors, the ways patient rights are violated under the current system, and the imperfections of medical legislation. As a result of the lecture, the Professor claimed that the university offered the Petitioner an assistant position.[5] Based upon this letter, we cannot ascertain how the Petitioner achieved or contributed anything to the field. While she may have lectured about topics relevant to the medical community or raised important issues, there is insufficient evidence to conclude

[5] The record does not contain evidence of an actual job offer or that the Petitioner accepted the position of assistant.

that such activity is an achievement or a significant contribution to the industry of labor relations or law. The Professor offered little evidence to substantiate how she was selected as an expert or what has occurred in the field of law as a result of her lecture. Therefore, it cannot be concluded that the Petitioner made "scientific achievements in the field of law," as the Professor claimed.

Similarly, the letter from [redacted] of [redacted] contained information that the Petitioner participated in an event for [redacted] concerning the emerging challenges in the field of labor rights. [redacted], stated that the Petitioner "outlined the main areas, identified problems and proposed measures to prevent further deterioration of the situation, namely, to implement realization of social policy." Although [redacted] expressed his appreciation to the Petitioner, we have insufficient information to conclude that the Petitioner was recognized outside of this particular organization and event.

Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Overall, the letters of record do not support a finding that the Petitioner has been recognized for achievements and significant contributions to the industry or field.

The Petitioner submitted numerous copies of articles and abstracts that she wrote as a student. The record contains little evidence that the Petitioner has written anything more recently than 2013 or that she has produced any written work beyond that which she produced as a student. Although many of these written materials may have been collated and distributed to libraries, as well as academic and governmental institutions, this does not indicate that they were published in a manner suggestive of an achievement or significant contribution in the field. The record indicates that many, if not all, student dissertations and research papers are collected and contained as a matter of course, regardless of their actual value to the industry or field. The record contains little information to suggest that among the students, the Petitioner's work was singled out for publication. Although some of the Petitioner's student work appears to have been posted in online forums or periodicals, the record contains insufficient information to substantiate a finding that these forums and periodicals are of a nature or reputation that publication in them would suggest an achievement or significant contribution in the field.[6] The Petitioner presented little evidence showing that her participation in scholarly or academic realms as a student indicates that she has sustained influence in the field as a whole.

The Petitioner asserted that she attended events and conferences related to her claimed area of exceptional ability, however in support of this assertion, the Petitioner submitted title pages of abstracts and collections of articles. We cannot determine how this evidence represents actual attendance or presentations at events and conferences. Accordingly, we conclude that the record does not support the Petitioner's assertion that she has participated in events and conferences. In addition, the

[6] While some forums claim to peer review and filter the content through an editorial board, others appear to be little more than informal blogs related to a particular topic.

Petitioner has not explained how producing academic research papers or participating in events and conferences as a part of one's education would comprise an achievement or significant contribution to the field.

We reviewed the documentation suggesting that the Petitioner's written work has been cited by three people within academia. The record contains evidence that a student pursuing a geography degree cited the Petitioner's work in her dissertation, along with two associate professors from different universities. While such citations support a finding that libraries have cataloged the Petitioner's written work, there is little indication that the Petitioner's work has been read or acknowledged outside of academia. As such, we conclude that these three citations do not persuasively establish that the Petitioner has received recognition for achievement of significant contributions within the field of law or labor relations.

Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

Summary

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner has not established her eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that she either possesses exceptional ability or is an advanced degree professional before we reach the question of the national interest waiver. We conclude that the evidence does not establish that the Petitioner meets the regulatory criteria for classification as an individual of exceptional ability or that she is a member of the professions holding an advanced degree. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Further analysis of her eligibility under the prongs outlined in Dhanasar would serve no meaningful purpose.[7]

III. CONCLUSION

The Petitioner has not demonstrated that she qualifies for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

[7] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding the Dhanasar 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).