U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26158883

Date: APR. 3, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software engineer, seeks classification as an individual of exceptional ability in the sciences. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner qualifies for classification as an individual of exceptional ability or, in the alternative, as a member of the professions holding an advanced degree. The Director further concluded that the Petitioner 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. 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.

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. *See* section 203(b)(2) of the Act; *see also* 8 C.F.R. § 204.5(k)(3). To qualify as an individual of exceptional ability, the Form I-140, Immigrant Petition for Alien Workers, must be accompanied by at least three of the six criteria provided at 8 C.F.R. § 204.5(k)(3)(ii). However, if the criteria at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the occupation sought, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

As noted above, the Director found that the record does not establish the Petitioner qualifies as an individual of exceptional ability. Specifically, the Director found that the record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (E) but none of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii). The

Director also found that the record does not establish, in the alternative, that the Petitioner qualifies as a member of the professions holding an advanced degree.

On appeal, the Petitioner reasserts that she satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (E), and (F). The Petitioner does not assert on appeal that the criteria at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to the occupation sought, *see* 8 C.F.R. § 204.5(k)(3)(iii), or that the record establishes she qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(1), (3)(i). Therefore, we limit our review to whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) in order to establish second-preference eligibility. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The Petitioner asserts on appeal:

> The background and professional experience, and superb skills of the [Petitioner] enabled the [Petitioner] to contribute to his [sic] field and will allow her to continue to do so in the future. Based on the evidence in the record, the [Petitioner] established that this criterion has been met, and USCIS erred in finding otherwise.

The Petitioner does not elaborate on appeal which particular item of evidence in the record she believes demonstrates recognition for achievements and significant contributions to the industry by peers, governmental entities, or professional business organizations, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), and how the Director's analysis of that evidence erred. However, in response to the Director's request for evidence (RFE), the Petitioner generally asserted that "attached Exhibit #4 . . . established that this criterion has been met."

Contrary to the Petitioner's assertions, the document identified as Exhibit #4 in the RFE response does not relate to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). Exhibit #4 consists solely of a 21-page document titled "Project business plan 'Programming school for children with disabilities,'" generally dated "2022." The business plan does not clearly indicate who prepared it; however, it refers to the Petitioner in an "applicant contact details" table. The business plan does not appear to have been prepared by peers, governmental entities, or professional or business organizations, nor does it constitute evidence of recognition for achievements and significant contributions to the industry that the Petitioner may have already performed. *See id.* Instead, it addresses potential activities the Petitioner has yet to perform. Therefore, it does not relate to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Although the Petitioner does not specifically identify on appeal any particular evidence that relates to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), in the decision the Director acknowledged that the record contains various training certificates, such as an Oracle Certified Professional Certificate and an Award of Completion from Oracle. However, as the Director explained, none of the certificates in the record address how they indicate the Petitioner may have made any specific, significant contributions to the field of software engineering in order to have received the certificates. Moreover, as the Director also explained, although the Petitioner submitted an undated document that purports to be an English translation of a certificate from the Academy of Public Administration, [redacted], the Petitioner

did not submit, as required, a copy of the original foreign language document. We further note that, even if the record contained the original foreign language document, the purported English translation of the certificate bears significant errors that reduce its credibility and undermine the reliability and sufficiency of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Specifically, the purported English translation of the certificate from the Academy of Public Administration, [redacted] states: "This is certifi [sic] that [the Petitioner] . . . was awarned [sic] the 3 place in the nomination . . . ." These significant typographical errors undermine the reliability and sufficiency of the certificate in question and of the remaining evidence in the record. *See id.*

Although we have reviewed the record in its entirety, it does not contain evidence that satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F); therefore, the Petitioner has not satisfied at least three of the six criteria provided at 8 C.F.R. § 204.5(k)(3)(ii).

In summation, the Petitioner has not established that she qualifies as an individual of exceptional ability and she does not assert, in the alternative, that she qualifies as an advanced degree professional; therefore, she is not eligible for second-preference classification. Section 203(b)(2) of the Act. We reserve our opinion regarding any remaining issues. *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).

As the Petitioner has not met the requisite second-preference classification, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.