



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29327220

Date: JAN. 26, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a veterinary dentist, seeks employment-based second preference (EB-2) 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 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish 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. Section 203(b)(2)(B)(i) of the Act. Because this classification requires that the individual's services be sought by a United States employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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 [noncitizen] 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 [noncitizen] 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 [noncitizen] has commanded a salary, or other remuneration 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.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, “If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.”

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ If a petitioner does so, we will then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. at 376.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act.

The Petitioner proposes to work as a veterinary dentist in the United States. The Director denied the petition, concluding that the Petitioner was not eligible for the EB-2 classification, either as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director determined that although the Petitioner met at least three out of the six criteria listed at 8 C.F.R. §

¹ USCIS has confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

204.5(k)(3)(ii), the record lacked evidence that the Petitioner's professional achievements set her apart from other professionals in the veterinary dentistry discipline to show a degree of expertise significantly above that ordinarily encountered in her field as required to establish exceptional ability. Moreover, the Director determined that although the Petitioner submitted sufficient evidence to demonstrate that the proposed endeavor has substantial merit, the evidence does not establish that the proposed endeavor has national importance.

On appeal, the Petitioner reiterates the same arguments and resubmits previously submitted documents to demonstrate her eligibility for the national interest waiver and underscore the sufficiency of the submitted evidence. For example, the Petitioner contends that she is eligible for the classification as a member of the professions holding an advanced degree because she holds a bachelor's degree in veterinary medicine, a master's degree in wildlife animal biology, specializes in two areas, and is in the process of completing a doctoral degree in veterinary surgery and anesthesia of wild animals. The Petitioner further professes that she possesses a degree of expertise significantly above that ordinarily encountered in her field as required to establish exceptional ability. She requests a reevaluation and reconsideration of the documents she submitted and argues that she has submitted evidence to demonstrate by a preponderance of the evidence her exceptional ability and that she merits a national interest waiver.

The Director determined that the Petitioner has not demonstrated that she holds a United States doctorate or a foreign equivalent degree for entry into her occupation and has not shown that she is licensed to practice in the United States. We have evaluated the Petitioner's documents and agree with the Director that the Petitioner has not provided evidence she holds a U.S. doctoral or foreign equivalent degree, a requirement customary for her specialty. 8 C.F.R. § 204.5(k)(2).

With respect to the Petitioner's claim that she is an individual of exceptional ability, the Director acknowledged that the Petitioner met at least three out of six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) and conducted a final merits determination. The Director recognized the Petitioner's experience, including her academic records, membership in professional associations, and acquisition of certifications and a license to practice the profession. However, upon evaluating the evidence submitted, the Director concluded that while the Petitioner possesses the necessary experience for the duties of the proposed endeavor, the evidence falls short of establishing that she has distinguished herself from others in the field, demonstrating exceptional ability.

On appeal, the Petitioner asserts that she strongly believes she possesses the "expertise above the average in the profession" and asks that we reconsider and reanalyze the evidence she submitted previously, and which the Director found insufficient. The Director concluded in a final merits determination that the Petitioner did not establish by a preponderance of the evidence that she has achieved a degree of expertise that is significantly above that ordinarily encountered in the sciences, arts, or business. Although the Petitioner claims that she is an individual of exceptional ability, she does not address the Director's final merits determination analysis and instead continues to focus exclusively on repeating her claim that the minimum evidentiary requirements were satisfied – an argument the Director ably considered, analyzed, discussed, and found insufficient.

Accordingly, we adopt and affirm the Director's decision regarding the discussion of exceptional ability and the final merits. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday

v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, analyzing her eligibility for a national interest waiver under the Dhanasar framework is unnecessary. Because the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding her eligibility for a discretionary waiver of the job offer requirement under the Dhanasar three-prong 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).

ORDER: The appeal is dismissed.