U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30801097

Date: MAY 1, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks classification a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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. 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification or the national interest waiver. The matter is now before us on appeal under 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 a national interest waiver, a petitioner must first show eligibility 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.

"Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2). An advanced degree is any United States or foreign equivalent academic or professional degree above a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

[1] The listed occupations are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] USCIS will then conduct a final merits determination to decide whether the evidence as a whole shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates EB-2 eligibility, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[4] 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.

II. ANALYSIS

In order to qualify for consideration for the national interest waiver, the Petitioner must first establish eligibility for the underlying EB-2 immigrant classification.

To show that an individual qualifies as a member of the professions holding an advanced degree, a petitioner must submit evidence showing that the individual has either earned a degree above that of a U.S. baccalaureate, or earned a U.S. baccalaureate or foreign equivalent degree followed by five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i). The Director concluded that the Petitioner had not met either of these requirements.

A credential evaluation in the record indicates that the Petitioner completed "one year of undergraduate coursework towards a Bachelor of Business Administration degree," in a "Bachelor's Degree program" that ordinarily takes "Four to six years." Therefore, the Director concluded that the Petitioner has not established eligibility for classification as a member of the professions holding an advanced degree. On appeal, the Petitioner does not address or dispute the Director's determination. Therefore, we consider that issue to be abandoned.[5]

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

[4] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts, and Third in an unpublished decision, in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[5] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226, 1228 n. 2

To establish 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), summarized below:

(A) An academic degree relating to the area of claimed exceptional ability;
(B) Ten years of full-time experience in the occupation;
(C) A license or certification for the profession or occupation;
(D) A salary or other remuneration that demonstrates exceptional ability;
(E) Membership in professional associations; and
(F) Recognition for achievements and significant contributions to the industry or field.

If the above standards do not readily apply to the individual's occupation, the petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii). If an individual meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual's 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). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

The Petitioner claimed that her evidence satisfied all six regulatory criteria, as discussed below. The Petitioner also asserted that she had submitted comparable evidence, but then she cited the same evidence. As the Director observed, the Petitioner did not explain how the six standard criteria do not readily apply to her occupation. The Petitioner does not pursue the comparable evidence claim on appeal.

> *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 Director determined that the Petitioner's various academic and training certificates satisfy this criterion. The question of whether the Beneficiary's educational credentials indicate exceptional ability would be an issue for the final merits determination, if the proceeding were to reach that stage.

> *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).

When the Petitioner filed the petition in August 2022, she stated that she had "15 years of professional experience as a Financial Manager Consultant." The Petitioner submitted letters from former co-

(11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

workers Petitioner's past employment. In the denial notice, the Director concluded that the letters were deficient because they did not specify that the Petitioner's employment had been full-time.

On appeal, the Petitioner states that the Director should have given more consideration to her experience. Examination of the record reveals more fundamental deficiencies beyond what the Director described in the denial notice.

On her own résumé and in an introductory letter, the Petitioner claimed two past positions. She stated that she worked as an employee training instructor for a transit service from 2007 to 2010, and as a commercial manager at a bank from 2010 to 2017. The information in the first group of submitted letters is consistent with these dates and job titles. The regulatory criterion requires evidence of ten years of full-time experience in the individual's intended occupation. The Petitioner did not claim or establish that her employment as an employee training instructor was in the occupation of a financial manager or "financial manager consultant." Her later employment at a bank is in the financial industry, but the Petitioner claimed less than ten years of experience in that position.

The Director issued a request for evidence in January 2023, asking for more details about the Petitioner's past employment, corroborated by her former employers.

The Petitioner's response included a letter, purportedly from the transit service, indicating that the Petitioner worked there in "the position of Financial Analyst . . . from 05/10/2007 to 06/25/2010." The letter provided no details about the Petitioner's duties, as required by 8 C.F.R. § 204.5(g)(1).

More significantly, the Petitioner herself had not previously claimed employment as a financial analyst before 2010. She initially stated: "From 2007 to 2010, I worked . . . as an Employee Training Instructor who acted in the development of training, qualification and certification of employees trained by me, organized lectures, seminars, workshops, group dynamics, Midia Training for executives, directors and superintendents." A letter from a former co-worker at the transit service likewise indicated that the Petitioner "was an instructor in the Citizen Driver program and worked in the training and preparation of [the service's] employees."

The new claim that the Petitioner was a financial analyst is a major revision of a material claim that raises significant questions of credibility. The Petitioner did not resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In the absence of objective documentary evidence that would credibly corroborate the revised employment claim, we do not conclude that the new claim has significant weight. The preponderance of the evidence in the record indicates that the Petitioner was an instructor, not a financial analyst, from 2007 to 2010.

The Petitioner's employment as account manager at a bank from 2010 to 2017 lasted less than the required ten years, and although it was in the financial services industry, the letters do not indicate that the Petitioner worked in the occupation of a "financial manager consultant." The Petitioner has not reliably documented employment in the financial industry before 2010, and she did not claim employment of any kind after 2017.

The Petitioner has not credibly established at least ten years of full-time experience in the occupation she seeks. Therefore, she has not met her burden of proof to satisfy the requirements of the criterion.

> *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 submitted translated copies of certificates showing that she had completed various short-term training courses, but these documents do not establish certification for a particular profession or occupation. She referred to "the diploma/certificate allowing [her] to practice [her] position," but a diploma is an educational credential, covered separately under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner also submitted a translated copy of "a statement card/license to work issued by the Ministry of Labor of Brazil allowing [her] to work in [her] field" and a "Bank Employees Union Statement Card." The Petitioner did not establish that either of these documents is a license or certification for a particular profession or occupation. The Ministry of Labor issued a "Work and Social Security Card" that contains records of her employment, but the document is not specific to any particular profession or occupation. The Bank Employees Union issued a card identifying the Petitioner as a member, but the Petitioner did not establish that this document is a license or certification for the occupation.

In the denial notice, the Director determined that the Petitioner had not established that the documents meet the applicable requirements. On appeal, the Petitioner does not directly address this criterion.

The Petitioner has not met her burden of proof to satisfy the requirements of the regulatory criterion.

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

The Petitioner cited the same evidence discussed above – her diploma, Work and Social Security Card, and Bank Employees Union membership card. The Petitioner repeated that these documents allow her to work in her field, but she did not explain how any of them established membership in a professional association.

In the denial notice, the Director concluded that the Petitioner had not established membership in professional associations. The Petitioner does not directly address this conclusion on appeal.

The Petitioner has not met her burden of proof to satisfy the requirements of the regulatory 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).

The Petitioner submitted translated copies of pay receipts from 2012-2017, showing "total earnings" ranging from R$4,144.24 to R$12,858.74 per month. The Petitioner also submitted a printout from a salary survey website that, the Petitioner stated, "shows that the national average monthly salary for a professional in [her] field is BR$3,513.80."

The Director determined that the Petitioner had not provided a sufficient basis for comparison to show that her remuneration demonstrates exceptional ability. On appeal, the Petitioner states that she had established a "salary above average" but does not elaborate further.

The salary survey printout relates to financial advisors, whereas the Petitioner's pay receipts list her job title as "Commercial Manager." The Petitioner did not establish that the terms are synonymous.

Also, the printout does not cite R$3,513.80 as the overall national average salary for a financial advisor. Rather, that figure relates to financial advisors with four to six years of experience, employed at a small company. At a larger company, a financial advisor with the same amount of experience would earn an average salary of R$7,904.43. The overall range of salaries spans from R$2,078.75 for the least experienced workers at small companies to R$13,358.49 for the most experienced employees at large companies. The Petitioner did not establish that her former employer would be classified as a small company for purposes of the survey.

Furthermore, the total earnings on the Petitioner's pay receipts include several additions with abbreviated annotations such as "PLR ADDITIONAL CCT" that the Petitioner did not describe or define. The pay receipts show that her total remuneration, including these additions, was considerably higher than her base salary, which ranged from R$1,952.76 to R$2,738.03. The Petitioner did not establish that these additional payments were for reasons relating to exceptional ability.

Because the Petitioner's total remuneration was considerably higher than her base salary, it is significant that the salary survey printout does not specify whether the figures in the survey represent base salaries alone or total compensation, with additions similar to those shown on the Petitioner's pay receipts. Without this information, the Petitioner has not established the relevance of the salary survey printout.

For the above reasons, the salary survey data does not persuasively show that the Petitioner commanded a salary or other remuneration that demonstrates exceptional ability.

The Petitioner has not met her burden of proof to satisfy the requirements of the regulatory 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 cited the same letters from former co-workers that she had also claimed as evidence of employment experience, along with a letter from a bank customer expressing satisfaction with the service the Petitioner had provided. These individuals described how the Petitioner's work benefited her employers and customers, but they did not establish that the Petitioner's efforts amounted to significant contributions to the industry or field.

The language of the regulation calls for "evidence of recognition for achievements *and* significant contributions to the industry or field." As such, materials that identify an individual's achievements but not significant contributions to the industry or field cannot suffice to satisfy the regulatory

requirements. *See Matter of Echeverria*, 25 I&N Dec. 512, 518 (BIA 2011) (holding that the use of the conjunction "and" in a series of regulatory requirements "is a clear indication" that one "must satisfy each of the [listed] requirements").

In the denial notice, the Director quoted from the letters and concluded that "they do not demonstrate how the self-petitioner's contributions were significant to the industry or field" or establish that "her work has had an impact beyond her employers." The Petitioner does not directly address this determination on appeal.

The Petitioner has not met the burden of proof to satisfy the requirements of the regulatory criterion.

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she qualifies for EB-2 classification, either as a member of the professions holding an advanced degree or as an individual of exceptional ability. If the Petitioner does not qualify for EB-2 classification, then she cannot qualify for the national interest waiver. Detailed discussion of her waiver claim cannot change the outcome of this appeal. Therefore, we need not reach, and therefore reserve, the issue of the Petitioner's eligibility for the national interest waiver under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not established eligibility for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. Therefore, the Petitioner has not shown eligibility for the national interest waiver. We will dismiss the appeal.

ORDER: The appeal is dismissed.