



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34828888

Date: NOV. 22, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager and entrepreneur with a background in art, seeks employment-based second preference (EB-2) immigrant classification 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 the Petitioner is an individual of exceptional ability. Specifically, the Director determined that although the Petitioner met at least three of the six exceptional ability criteria, she did not establish she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director also determined that the Petitioner is not eligible for a waiver of the job offer requirement in the national interest. While the Director concluded that the proposed endeavor has substantial merit, the Director found that the Petitioner did not establish that the proposed endeavor has national importance, that she is well-positioned to advance the proposed endeavor, and that it would be beneficial to the United States to waive the requirements of a job offer and labor certification. The matter is now before us on appeal pursuant to 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.

On appeal, the Petitioner refers to previously submitted evidence in claiming that she is an individual of exceptional ability and is eligible for a national interest waiver. The Petitioner asserts that the Director failed to properly analyze the evidence in the record and the denial decision was therefore deficient. Alternatively, the Petitioner asserts that she qualifies for an approved Form I-140 under the category for individuals of extraordinary ability. Along with her brief, the Petitioner includes business records and previously submitted documents.

We adopt and affirm the Director's decision as it relates to the finding that the Petitioner is not an individual of exceptional ability. *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). The Director correctly analyzed the record in determining that the Petitioner met at least three of the six exceptional ability criteria. However, the Director also thoroughly and properly analyzed the record in finding that the Petitioner did not establish she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director reviewed the Petitioner’s statement, educational and training records, business plan, and employment records in finding that she did not demonstrate how her education and training set her apart from others in the fields of art, general and operations management, or entrepreneurship, and that she has a degree of expertise significantly above others ordinarily encountered in those fields. The Director discussed the letters of support in detail, noting the lack of relevant details in them and that some of them would not be considered as they were dated after the Form I-140 filing date. The Director noted the lack of evidence of the Petitioner’s prior entrepreneurship experience and of her proposed business being established, in addition to issues with the feasibility of her business plan. The Director mentioned that her prior remuneration, membership in a professional association, awards, articles about her, and course certificates do not reflect a degree of expertise significantly above that in her proposed fields. On appeal, the Petitioner submits tax returns, bank statements, and company incorporation records of a remodeling business that she is a partner in. While this indicates experience in entrepreneurship, the Petitioner has not addressed any of the other deficiencies mentioned by the Director or otherwise established that she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

The Petitioner has not established that she is an individual of exceptional ability. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding the Petitioner’s eligibility for a national interest waiver. *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). Lastly, we will not address the Petitioner’s claim on appeal that she is eligible for an approved Form I-140 as an individual of extraordinary ability. The Petitioner did not file her Form I-140 under this preference category and therefore her claims are not relevant to this appeal.

ORDER: The appeal is dismissed.