U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25672441

Date: MAR. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a travel agent/tour guide, 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). A petitioner must first establish eligibility for the EB-2 classification. 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 the record did not establish that the Petitioner qualifies for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director further concluded that the Petitioner has 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.

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 because the Petitioner did not establish that she meets the statutory criteria of the EB-2 immigrant classification. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any appellate arguments regarding whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. *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).

I. LAW

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.

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.[1]

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).[2]

II. ANALYSIS

The issue to be addressed in this decision is whether the Petitioner established that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability.

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[1] Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), 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."

[2] 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 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

A. Advanced Degree Professional

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 not the primary basis for the Petitioner's claim that she is eligible for the EB-2 visa classification, the Director nevertheless discussed whether the Petitioner meets the criteria of an advanced degree professional, noting that the Petitioner provided evidence showing that she earned a bachelor's degree in the "Undergraduate Program of Tourism" at the [redacted] University Center in December 2006. The Petitioner submitted documentation indicting that after earning the bachelor's degree, she pursued a post-graduate course of study ("lato sensu") in financial management, which she completed in October 2008. In addition, the Petitioner provided a certificate of completion for an "Agent of Dreams" course she completed in [redacted] Florida in 2021, as well as certificates of participation in various events and lectures, such as a 35-hour "Tourism and Hospitality Week" event in 2003 and a 20-hour "Tourism Week" event in 2004, as well as lectures in tourism and hospitality and entrepreneurship in 2003, among others.

Having reviewed the information contained in the record and the AACRAO EDGE database, the Director determined that the Petitioner has not met her burden of establishing that her foreign education is equivalent to that of a professional holding an advanced degree pursuant to 8 C.F.R. § 204.5(k)(3)(i)(A). The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge. The Director noted that the database does not indicate that the Petitioner's post-graduate "lato sensu" is the foreign equivalent of a U.S. master's degree. Rather, the database suggests that the Petitioner may have completed a graduate program in which she received graduate credits leading to a professional certificate, but not leading to a graduate degree. *Id.* The Petitioner does not contest this on appeal and has not provided any credential evaluation assessing her educational credentials, either with the initial petition filing or on appeal. Based on a review of the record, and in consideration of the information in EDGE, we concur with the Director on this issue that the Petitioner has not established that her education is equivalent to a U.S. master's degree.

The evidence provided is also insufficient to conclude that the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty. Although the Petitioner provided a résumé listing employment in the tourism industry from August 2000 to January 2018, she submitted only two employment letters and only one of those letters addresses the relevant period of employment following December 2006, when the Petitioner earned her bachelor's degree. The letter in question was authored by [redacted], who stated that she met the Petitioner while working at [redacted] where she and the Petitioner both worked. [redacted] stated that she became owner of a "CVC store" in 2009 and the Petitioner came to work for her at that store. According to the Petitioner's résumé, her period of

employment at CVC lasted from January to March 2009 and thus does not account for five years of post-graduate work experience. [redacted] also claimed that the Petitioner has been "at all times in the exercise of her profession" since the two became acquainted in 2004 and continued to be acquainted until 2017; [redacted] further stated that the Petitioner "is duly registered with her active functional license in the Ministry of Tourism," thus she indicates that the Petitioner has over five years of post-baccalaureate employment experience. However, [redacted] listed no specific dates of employment in the letter nor provided any specific information about any of the Petitioner's employers or the positions the Petitioner held after having attained her bachelor's degree. As such, [redacted] statements do not sufficiently document or lead us to conclude that the Petitioner worked in the tourism industry and that her experience was progressive in nature.

Although the Petitioner provided an employment letter from [redacted] as correctly stated in the Director's decision, that letter discussed the Petitioner's employment from August 2000 until May 2004, before she attained her bachelor's degree in 2006, and therefore it is not relevant to the issue of whether the Petitioner gained five years of "progressive post-baccalaureate experience" in her designated specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

In sum, the Petitioner has not provided sufficient evidence that she possesses an advanced degree or that the Petitioner's foreign equivalent of a U.S. bachelor's degree is followed by five years of progressive post-baccalaureate experience.

B. Exceptional Ability

Next, we will discuss the factors and evidence that pertain to the main focus of the Petitioner's claim that she qualifies for the EB-2 immigrant classification as an individual of exceptional ability.[3]

As noted above, 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). When a petitioner has satisfied at least three of the six criteria, a final merits determination concerning the petitioner's eligibility is still required per the two-part adjudication framework established in *Kazarian v. USCIS*, 596 F .3d 1115 (9th Cir. 2010). We consider the totality of the record to determine if a petitioner has demonstrated, by a preponderance of the evidence, that they have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. In the final merits analysis, the quality of the evidence must be evaluated. *Matter of Chawathe*, 25 I&N Dec. at 376.

In the present matter, the Director determined that the Petitioner met the individual criteria outlined at 8 C.F.R. § 204.5(k)(3)(ii)(A), which states the following:

> *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.*

[3] While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

As noted earlier, the Petitioner provided a copy of her diploma showing that she earned a bachelor's degree in the "Undergraduate Program of Tourism" at the [redacted] University Center in December 2006. We agree with the Director's determination that the Petitioner met this criterion. We note, however, that section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university, school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability.

On appeal, the Petitioner asserts that she also meets the two criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (C) addressed below.[4]

> *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)

Although the Director acknowledged the employment letter from [redacted] discussing the Petitioner's employment as a licensed tour guide from August 2000 until May 2004, he found the letter to be insufficient because it did not demonstrate that the Beneficiary has at least ten years of full-time experience as a tour guide or travel agent.

On appeal, the Petitioner argues that the Director "failed to analyze the letters of previous employers" and points to the employment letter from [redacted] which had been previously submitted. Although we agree that the Director did not address this letter in the denial, a review of the letter indicates that its contents are insufficient as evidence of the Petitioner's "continuous work from 2004 to 2017." Although [redacted] claims to have been professionally acquainted with the Petitioner for over a decade, the Petitioner's résumé indicates that [redacted] only employed the Petitioner from "1/2009 to 3/2009." As such, [redacted] employment letter only accounts for two or three months of the Petitioner's period of employment in the travel industry. The Petitioner also provides government issued records showing her as a taxpayer during various periods of employment. However, the plain language of the regulation requires letter(s) which 1) are from current or former employers and 2) establish ten years of full-time experience in the occupation. Not only has the Petitioner not demonstrated that the records are the equivalent of a letter from a current or former employer, but they also do not establish at least ten years of full-time experience in the travel industry.[5]

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

Although the Director determined that the Petitioner did not provide evidence to satisfy this criterion, the Petitioner points to a previously submitted copy of a certificate which was issued to the Petitioner

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[4] As the Petitioner does not address the three remaining criteria, we consider them abandoned. *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 (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).

[5] We note, for example, that from June 2012 until May 2014, the Petitioner's employment is listed as [redacted] Further, the social security records do not indicate whether past employment was on a full or part-time basis, nor does it provide any job description or duties.

by the foreign Ministry of Tourism which shows a five-year period of validity, from August 12, 2021, to August 12, 2026. Accordingly, the Director's conclusion that the Petitioner did not satisfy this criterion was incorrect. However, despite the Director's error in assessing this criterion, the record only shows that the Petitioner satisfied two of the six criteria.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfied at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. As the Petitioner has not met the threshold requirement for this classification, further analysis of her eligibility for a national interest waiver would serve no meaningful purpose.

III. CONCLUSION

Because the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability, she has not established eligibility for EB-2 classification.

ORDER: The appeal is dismissed.