U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26579757

Date: MAY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a sewing professional, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement "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.

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.

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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

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

[2] 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.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3]

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner 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. 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[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

With respect to the underlying EB-2 classification, the Petitioner submitted evidence to meet three of the six criteria of evidence for exceptional ability. The Director concluded that the Petitioner met two criteria, academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A) and membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E). However, as discussed below, we find the record does not support the conclusion that the Petitioner meets either criterion.

In denying the petition, the Director found the Petitioner did not meet the criterion for recognition for achievements and significant contributions to the field at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director further found that the Petitioner did not merit a discretionary waiver of the job offer requirement "in the national interest." On appeal, the Petitioner reasserts being an individual of exceptional ability by satisfying the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), and that she provided sufficient evidence for the national interest waiver. After reviewing the evidence in the record, we find that the Petitioner has not demonstrated satisfying at least three of the six initial evidentiary criteria and is not otherwise eligible for the requested benefit.[5]

> 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 found the Petitioner's diploma from [redacted] Technical School in [redacted] was sufficient to meet this criterion. However, the record does not include sufficient evidence that the diploma relates to the Petitioner's area of exceptional ability, professional sewing. The diploma states that the Petitioner "completed the full course of the pedagogical technical school having specialized

[3] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, supra at F.5(B)(2).

[4] See also Poursina v. USCIS, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[5] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

in programming in automatized systems and electronic computers." The record does not include further evidence of the Petitioner's academic record to demonstrate it relates to her area of exceptional ability, professional sewing. Therefore, the diploma from [redacted] Technical School is insufficient to demonstrate it relates to the Petitioner's area of exceptional ability and does not meet the plain language of the criterion.

The Petitioner also submitted other certificates and diplomas, such as a diploma from Wedding Fashion [redacted] a certificate of appreciation from the [redacted] Festival, a certificate of attendance from [redacted] Art Fair, a diploma for a master class from the [redacted] Fair, a diploma from [redacted] Show Wedding Exhibition, and a diploma from the Chairman of the [redacted] Association for participation in the Xth exhibition. The diplomas and certificates are not accompanied with official academic records or evidence showing that the issuing organizations are colleges, universities, or other institutions of learning. Since the record does not demonstrate the certificates and diplomas are issued by colleges, universities, or other institutions of learning, they do not meet the plain language of the criterion.

As such, the Petitioner has not established eligibility under this criterion. We therefore withdraw the Director's finding that the Petitioner has met this criterion.

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

The Petitioner relies on membership documentation for the Association of Sewing and Design Professionals (ASDP) to satisfy this criterion. The Petitioner submitted informational material about ASDP and a printout of her ASDP profile and membership details. The Petitioner's ASDP profile indicates her "membership status" as "pending – New" and that her "application has been submitted and is being reviewed. It will be activated upon approval. Please contact the Administrator if you wish to cancel your application." Therefore, it appears the Petitioner submitted an application for membership to ASDP, however, the record does not include evidence demonstrating her active membership to ASDP at the time of filing the Form I-140 petition.[6]

As such, the Petitioner has not established eligibility under this criterion. We therefore withdraw the Director's finding that the Petitioner has met this criterion.

In summation, the record does not satisfy at least three of the criteria at 8 C.F.R. § § 204.5(k)(3)(ii). Although the Petitioner claims eligibility for an additional criterion on appeal, relating to recognition for achievements and significant contributions to the field at 8 C.F.R. § 204.5(k)(3)(ii)(F), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii), we reserve these issues.[7]

[6] See Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (holding that a petitioner must establish eligibility at the time of filing; an immigrant petition cannot be approved after a petitioner becomes eligible under a new set of facts).
[7] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also Matter of L-A-C-, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite second-preference classification as an individual of exceptional ability. Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a national interest waiver. We reserve our opinion regarding whether the record satisfies any of the three prongs of the Dhanasar analytical framework.

ORDER: The appeal is dismissed.