U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28400326

Date: SEP. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an accountant, seeks employment-based second preference (EB-2) immigrant classification 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). She also seeks a national interest waiver of the job offer requirement attached to this classification under section 203(b)(2)(1)(B) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. The Director further determined that the Petitioner did not establish that it would be in the national interest to grant her a discretionary waiver of the job offer requirement. 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 a member of the professions holding an advanced degree 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

[1] 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).

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

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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[3], 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. EB-2 CLASSIFICATION

The first issue to be addressed is whether the Petitioner established her eligibility for EB-2 classification.

The record reflects that the Petitioner initially claimed eligibility as a member of the professions holding an advanced degree in accounting and finances from a U.S. college or university. In a request for evidence (RFE), the Director acknowledged this claim, but emphasized that the record indicates the Petitioner earned a bachelor's degree in accounting from a U.S. college in 2019, and not an advanced U.S. degree as claimed. The Director further concluded that she could not, in the alternative, document the required five years of progressive post-baccalaureate experience in the specialty at the time she filed this petition in March 2021, and therefore did not establish that she holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). The record supports the Director's determination, and the Petitioner has not pursued her initial claim that she qualifies for EB-2 classification as an advanced degree professional. She indicates that she qualifies, in the alternative, as an individual of exceptional ability in the arts, sciences or business.

The Director determined that the Petitioner satisfied only two of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and therefore does not qualify for the requested classification. On appeal, the Petitioner asserts that she submitted sufficient evidence to establish that she meets at least one additional criterion and is otherwise qualified to be classified as an individual of exceptional ability. She also submits new evidence for consideration.

The record supports the Director's determination that the Petitioner satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (E), based on evidence that she possesses a bachelor's degree in accounting

[2] U.S. Citizenship and Immigration Services (USCIS) has previously 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.

[3] *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).

and is a member of a professional association in her field. However, for the reasons provided below, we agree with the Director's conclusion that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability by meeting at least three criteria.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the individual 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)

This criterion focuses on evidence of experience in the occupation which a petitioner intends to pursue in the United States. The Petitioner initially submitted: (1) a letter from [redacted] indicating that she worked as an administrative assistant for this organization from May 1, 2012 until March 30, 2015; (2) a certification and confirmation of contract extension from the Organization of the American States, Mission to Support the Peace Process indicating that the Petitioner was employed as a secretary in the [redacted] Colombia regional office from April 5, 2015 until August 31, 2015; and (3) a "notice of hire" from the District of Columbia Department of Employment Services indicating that the Petitioner was hired through a staffing agency on a contract basis for a term commencing in August 2019 that was not to exceed one year.[4]

In the RFE, the Director advised the Petitioner that the initial evidence was insufficient, and she would need to submit employment verification letters from her current or former employers. The Director noted that such letters should be on employer letterhead, provide her dates of employment, and state the duties she performed.

In response, the Petitioner stated that she "worked in accounting from 2009 until 2015," at which time she was required to cease working based on the requirements of her student visa. She stated that since graduating in 2019, she "continued to work in accounting, continuously advancing her career." The Petitioner provided a revised and updated resume indicating she worked as an "accountant" for [redacted] from May 2009 until May 2015, and had been continuously employed in accounting-related positions for U.S. employers from August 2019 through June 2022. She did not, however, claim that she had ten years of full-time work experience in the field or provide the requested evidence in the form of employment verification letters from her employers. Further, as noted, she had previously submitted a letter from [redacted] confirming that she worked for this employer in the position of administrative assistant for approximately three years, not as an accountant for six years. She did not provide an explanation for the changes made to her employment history and did not sufficiently document her claimed six years of experience as an accountant in Colombia.

The Director determined that the Petitioner did not provide evidence that she meets this criterion. The Petitioner does not contest this determination on appeal. Rather she repeats her unsupported claim that she worked "in accounting" from 2009 until 2015, and from May 2019 until the present. Because the record lacks evidence that the Petitioner has at least ten years of full-time employment in the occupation in which she seeks to provide her services in the United States, she has not satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

[4] The Petitioner's initial submission included a resume in which she indicated that she had worked for the D.C. government as a "financial transaction analyst" from "August 2019 to present." She listed three other accounting-related positions held with U.S. employers between September 2017 and August 2019, but did not provide letters from her former employers confirming her full-time experience with their organizations.

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 indicated in response to the RFE that she "does not have her professional license, Certified Public Accountant," but noted that "she will easily obtain the certification" if she is able to remain in the United States. She noted that she maintains a "CPA membership in South Carolina."

The Petitioner provided evidence that she is a member of the South Carolina Association of CPA (SCAPA). However, she concedes that she does not yet have a professional license and did not provide evidence that this membership satisfies this criterion's requirement that she possess a "license" or "certification." In fact, the submitted welcome letter she received from SCAPA encourages her "to continue on [the] path to becoming a CPA."

The Director determined that the Petitioner did not provide evidence that she meets this criterion, and on appeal, she repeats her previous claim that she will be able to obtain a license or CPA certification in the future. However, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(l), (12). The record therefore supports the Director's conclusion.

Evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

With respect to this criterion, the Petitioner stated in response to the RFE that when she is granted "permanent permission to obtain employment in the United States, she will easily be able to command a salary reflective of her exceptional ability." She provided evidence that she had negotiated a salary offer of over $56,000 for an Account Clerk III position with a county police department in 2020. The submitted documentation indicates the salary range for the position was $35,499 to $81,344, and that she was initially offered the entry level salary. While this evidence indicates that she was able to negotiate a salary that was higher than the minimum offered by the prospective employer, she did not establish how the agreed salary figure demonstrates her exceptional ability. The Director determined that she did not meet this criterion.

On appeal, the Petitioner asserts that she recently accepted a government position that has "the commanding salary of $91,865.87." She submits her offer letter and notice of her appointment to the position in January 2023, approximately 22 months after she filed the petition. She does not claim that the previously submitted evidence met the requirements of this criterion or that she had commanded a high salary demonstrating exceptional ability prior to filing this petition. As noted, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(l); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Therefore, we need not evaluate whether the new evidence provided on appeal satisfies the requirements of this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner stated that she meets this criterion because she "has been invited to be a speaker at various conferences and work training courses which establish her achievements and contributions to the industry as noted by peers, government entities and professional organizations."

The revised resume the Petitioner submitted in response to the RFE has a section titled "speaking engagements" and references a conference on "Transitioning from college students to business professionals," held in October 2018 and a Carolina HBCU Talent Showcase held in September 2019. However, the Petitioner did not provide any independent evidence of her participation as a speaker at these or any other "conferences and work training courses" or documentation related to these events.

The Director acknowledged that the Petitioner submitted reference letters in support of her petition. We agree with the Director's determination that those letters do not discuss the Petitioner's achievements and significant contributions to the areas of accounting or financial management, and therefore do not demonstrate recognition for any achievements or contributions. For example, she submitted a letter from a professor of accounting and finance who states that she was one of his "most ambitious students." The professor praises the Petitioner's personal attributes and academic performance and states that she will be a "great asset" to the United States, but does not describe any recognized achievements or significant contributions she has made to the accounting field.

The Petitioner's strong academic performance is well documented in the record, and we note that the IRS awarded her a "Community Service Certificate" for her participation in the agency's Volunteer Income Tax Service, Tax Counseling for the Elderly, and Stakeholder Partnerships, Education and Communication programs. While her academic achievements and commitment to community public service are admirable, this evidence does not show she has received the required recognition for significant contributions to her field or industry as required by the plain language of this criterion.

On appeal, the Petitioner once again references her prior engagements as a conference speaker and emphasizes that she recently received a mayoral appointment to a key position in city government. The record continues to lack any supporting documentations related to the Petitioner's speaking engagements. Further, as noted above, the Petitioner assumed her current governmental position in January 2023, nearly two years after she filed this petition and therefore this evidence cannot establish that she met this criterion at the time of filing.

Overall, the personal recognitions described and documented in the record do not demonstrate the Petitioner has been recognized for "achievements and significant contributions" to the broader accounting and financial management field. Accordingly, the Petitioner has not demonstrated that she satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner has not submitted the required initial evidence demonstrating that she meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and we therefore need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2).

III. NATIONAL INTEREST WAIVER

The Petitioner has not established her qualification for the EB-2 classification and is therefore ineligible to be granted a national interest waiver as a matter of discretion. Although the Petitioner asserts on appeal that she meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. *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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Petitioner has not established that she is eligible to be classification as an individual of exceptional ability or that she is otherwise eligible for EB-2 classification. Accordingly, the petition will remain denied and the appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.