U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28311550

Date: SEP. 20, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a travel advisor, 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 listed at 8 C.F.R. § 204.5(k)(3)(ii).[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

[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.

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.[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

The Petitioner proposes to be a manager and travel advisor for her tourism business, [redacted] With respect to the underlying EB-2 classification, the Petitioner initially submitted evidence with the petition to meet five of the six criteria of evidence for exceptional ability. The Director concluded that the Petitioner met one criterion, license or certification of the profession or occupation at 8 C.F.R. § 204.5(k)(3)(ii)(C).

In denying the petition, the Director found the Petitioner did not meet the criteria for academic record related to the exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A), commanded a salary demonstrating exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), membership in a professional association at 8 C.F.R. § 204.5(k)(3)(ii)(E), or 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 criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), 8 C.F.R. § 204.5(k)(3)(ii)(E), and 8 C.F.R. § 204.5(k)(3)(ii)(F), and that she provided sufficient evidence for the national interest waiver. The Petitioner does not address or contest on appeal the Director's finding that she does not meet the criterion that she commanded a salary demonstrating her exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(D). Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. See, e.g., Matter of O-R-E-, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). 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]

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[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. USC1S, 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.

> An official academic record showing that the [noncitizen] 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 that the record does not support the criterion since the Petitioner's bachelor of economics from University of Science and Technology [redacted] is not related to the Petitioner's area of exceptional ability, travel advisor for a tourism business. The Petitioner argues on appeal that her degree in economics has a specialization in international economics and trade, which "is relevant to the [Petitioner's] proposed endeavor" and has provided her with "the skills and knowledge that will be instrumental in implementing the proposed endeavor." She further argues, "The coursework required by University of Science and Technology [redacted] in the Economics program is substantially equivalent to the required coursework [sic] leading to a baccalaureate [sic] degree from an accredited institution of higher learning in the United States."

We do not agree with the Petitioner's argument. The regulations require that the academic record show that the Petitioner has a degree related to the area of her exceptional ability. The record includes the Petitioner's degree, an academic course transcript, and an academic evaluation. A review of her academic course transcript indicates the Petitioner's coursework relates to economics and international economics and trade. The Petitioner has not indicated which of these courses relate to tourism, her claimed area of exceptional ability. Therefore, the Petitioner has not established by a preponderance of the evidence that her degree in economics satisfies the plain language of the criterion.

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

This criterion requires evidence of membership in a professional association. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation.

To meet the criterion, the Petitioner relies on membership documentation for Global Business Travel Association, including undated receipts indicating her "government direct membership", online print outs of website links, and a paragraph summary for Global Business Travel Association. The Director found that the Petitioner did not submit evidence showing that Global Business Travel Association is a professional association and that paying an annual dues is not sufficient to show membership in a professional association. On appeal, the Petitioner argues that Director erred in the decision and that the evidence in the record establishes that this criterion has been met.

We agree with the Director that the record does not show that Global Business Travel Association is a professional association as required under the criterion. The summary submitted indicates that Global Business Travel Association "represents the business travel industry" and its membership "includes business travel professionals." However, the record does not show Global Business Travel Association requires that its membership body be comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. Therefore, the Petitioner has not demonstrated her membership in a professional association under this criterion.

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. Therefore, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). 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).

Since the Petitioner has not established that she meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we 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 sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

The Petitioner has not established her qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that she meets all three of the prongs under the Dhanasar analytical framework, we reserve our opinion regarding these issues. See INS v. Bagamasbad, 429 U.S. at 25-26; see also Matter of L-A-C-, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability. Therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.