U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24810095

Date: MAR. 21, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a "general and operations manager," seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability,[1] 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 qualifies as an individual of exceptional ability. The Director further concluded that the Petitioner had 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).[2]

---

[1] In the Petitioner's response to a request for evidence, the Petitioner stated that she is an individual of exceptional ability and also claimed that she "has attained the equivalent of an "Advanced Degree in Business." This was a deviation from the Petitioner's claim at the time of filing, when she stated that she meets the EB-2 classification requirements because she is an individual of exceptional ability. On appeal, however, the Petitioner reverts back to her original claim that she qualifies for the EB-2 immigration classification as an individual of exceptional ability. As such, we will limit our discussion of the Petitioner's eligibility for the EB-2 classification to that claim and we will not discuss whether the Petitioner qualifies for this classification as a member of the professions holding an advanced degree.

[2] The Director noted that the Petitioner did not meet the criteria of establishing national importance. On appeal, we note that the evidence of record does not show that the Petitioner could demonstrate national importance or meet the requirements of a national interest waiver such that approval of the petition is warranted.

I. LAW

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).[3]

(A) An official academic record showing the noncitizen's possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
(B) Letters from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the proposed occupation;
(C) A license to practice the profession or certification for the profession or occupation;
(D) Evidence of the noncitizen's receipt of a salary or other remuneration demonstrating exceptional ability;
(E) Proof of membership in professional associations; or
(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[4] 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[5], 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 states that she has 19 years of "recognized expertise in business" and plans to "continue her career in the United States as General and Operations Manager." Although the Petitioner claims

[3] 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).
[4] 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.
[5] *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).

to have "a degree of expertise significantly above that ordinarily encountered in business management," she states that her "specialized knowledge" spans multiple areas, which include the following: Business administration and management, real estate transactions, purchasing and entrepreneurship, marketing and sales, personnel management, strategic partnerships and planning, public administration, and leadership.

As noted above, the Director concluded that the record lacked sufficient evidence showing that the Petitioner satisfied the necessary criteria to qualify for classification as an individual of exceptional ability.[6] Specifically, although the Petitioner asserted that she satisfied the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C) and (E)-(F), the Director concluded that the only requirements the Petitioner satisfied were those of 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C), the criteria pertaining to the Petitioner's academic record and licensing, respectively. We conclude that the record supports the Director's favorable determination concerning the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). However, for the reasons discussed below, we will withdraw the Director's decision relating to the official academic criterion under 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires 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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

To demonstrate that she satisfied this criterion, the Petitioner submitted her diploma and corresponding transcript from [redacted] showing that she completed the "Technical Program in Real Estate" in February 2019. The transcript shows that the Petitioner took the following courses: law and legislation, economics and market, financial mathematics, human relations and ethics, architectural drawing and civil construction, real estate services, real estate marketing, language and communication, real estate search, and quality in provision of services. The Petitioner also provided an evaluation from the United States Credential Evaluations stating that the Petitioner's foreign diploma is the U.S. equivalent to one year of an undergraduate program in real estate. However, in Part 6 of the Form I-140, the Petitioner identified her occupation as "general & operations manager" and stated that this occupation would involve planning, directing, or coordinating the operations of public or private sector organizations" as well as "formulating policies [and] managing daily operations." In her supporting statement, the Petitioner further stated that "General and Operations Managers are the go-to men and women in a business" whose focus is to "help various departments within a company coordinate to meet the end goals." The Petitioner has not established that her diploma in real estate relates to her claimed area of exceptional ability, which in this case is general and operations management. We therefore conclude that the Petitioner did not establish that she satisfied the provisions of 8 C.F.R. § 204.5(k)(3)(ii)(A) and we will withdraw the Director's favorable determination regarding this criterion.

Further, for the reasons discussed below, we agree with the Director's determination that the record does not establish that the Petitioner has satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii).

---

[6] The Petitioner does not claim, nor is there evidence in the record to show, that she meets the regulatory requirements for a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2).

First, we will address the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), which requires the following:

> *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.*

In this case, the record contains the following documents regarding the Petitioner's former and current employment:

- Employment letter authored by [redacted] partner and owner of [redacted] a real estate company located in Brazil. The letter states that the Petitioner was employed in the position of "administrator/manager" from January 1, 2014, to November 15, 2018, at which time she is claimed to have become a partner and owner.
- Certificate from the [redacted] listing the four public service positions the Petitioner held from February 2006 through January 2014, starting with office assistant at the [redacted] then, chief of the material section at the billing and processing department of the [redacted] continuing on to fund programming assistant at the budget, finances and accounting department – SMS, and moving on to supply and purchase assistant at the supply, purchase and equity department – SMS.
- Certification from the [redacted] City Council human resources department listing the Petitioner's appointment as a civil servant in the position of parliamentary advisor from November 10, 2000, to April 1, 2001, and from April 1, 2001, to March 9, 2005.

In the denial, the Director noted that despite having been issued a request for evidence (RFE) where the Petitioner was asked to provide evidence that the positions she held with [redacted] and in the public sector were full-time and that the duties of public service position relate to the Petitioner's area of exceptional ability, the Petitioner did not address these issues. On appeal, the Petitioner contends that she has at least 15 years of full-time work experience again without addressing the issue of whether the positions related to her area of exceptional ability. However, in order to meet the burden of proof, the Petitioner must provide relevant, probative, and credible evidence in support of her assertions. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner has not provided sufficient evidence showing that she has at least 10 years of full-time experience in the position for which she is being sought. Therefore, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

Next, we will address the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), which requires evidence of the Petitioner's membership in professional associations.[7] The Petitioner initially submitted evidence that her foreign employer, [redacted] is associated with the "Commercial and Industrial Association of [redacted] and is also in good standing and associated with "Civil Construction Industries Union of [redacted]

[7] The Petitioner initially claimed that she satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(D), which pertains to salary as an indicator of exceptional ability. However, the Petitioner did not respond to the RFE further addressing this criterion, nor did she contest the Director's determination regarding this criterion on appeal. Issues or claims not addressed on appeal are deemed to be waived. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

In response to the RFE, the Petitioner provided more evidence showing [redacted] association with [redacted] The Petitioner also submitted an excerpt from the [redacted] Builders Association directory showing a listing of the Petitioner's U.S.-based construction company, [redacted] However, these documents pertain to the respective memberships of two entities and do not establish that Petitioner herself is a member of a professional association. The Petitioner also provided identification cards showing that she is a real estate agent registered in Brazil with a federal and regional council for real estate brokers, [redacted] respectively. However, the evidence presented does not demonstrate that either organization has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that either organization otherwise constitutes a professional association.[8]

Likewise, evidence that the Petitioner is a member of the Florida United Business Association (FUBA), which was also included in the RFE response, is insufficient to show the Petitioner's membership in professional associations. Although the Petitioner provided a printout from FUBA's website providing an overview of the organization, the information indicates that FUBA is a trade association for owners of small businesses and offers various benefits to its dues-paying members. The Petitioner provided no evidence listing the requirements for FUBA membership or other evidence showing that FUBA members are professionals and that membership in FUBA is tantamount to membership in a professional association.

Lastly, evidence showing that the Petitioner is a member of the Florida Sheriff's Association is similarly insufficient to show membership in a professional association, as membership in the non-profit organization is unrelated to the Petitioner's occupation and instead is akin to a charitable donation that goes towards supporting Florida's sheriffs "in their roles of enforcing the law and protecting the public in our state." In light of these deficiencies, the Petitioner has not shown that she satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Finally, we will discuss the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires the following:

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.*

In support of the petition, the Petitioner provided several letters from individuals who stated that they dealt with the Petitioner in a professional setting, such as a building materials department store, whose owner – [redacted] – stated that the Petitioner has been a patron of her store for over 10 years. Another letter was submitted by an owner of a land developing company who claimed that he met the Petitioner in 2000 and "developed a professional relationship [with her] at events where developers were present." Two other letters were from [redacted] "City Councilor" and its "Vice-Mayor [] and General Director of the Municipal Department of Water and Sewage," respectively. Both stated that they became acquainted with the Petitioner when she was employed as a civil servant

[8] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "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." Section 101(a)(32) of the Act states that "the 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."

in [redacted] To the extent that the latter individual claims to have first met the Petitioner in 1986, if in a work capacity, such claim lacks credibility given that the Petitioner was only 12 years old in 1986 and does not claim to have started her employment as a civil servant until November 2000. Such a discrepancy, if unresolved with independent, objective evidence, may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The discrepancy aside, however, the letters described herein are insufficient as they do not establish that the Petitioner was recognized for achievements and significant contributions to her industry or field. Likewise, a letter from an unidentified representative of Revista Cult, a magazine, carries limited evidentiary weight as it merely makes broad references to the Petitioner's participation in various events where she is claimed to have shown dedication and commitment "to showing her products and attracting the attention of those who were present [at the even]." Although the unidentified author of the letter claims that the Petitioner is "widely lauded in the city [sic] of [redacted] for her work, it does not establish that the Petitioner was recognized for achievements and significant contributions to her industry or field.

On appeal, the Petitioner asserts that she has "extensive professional experience" and "has achieved significant acclaim" in the course of her career. Although the Petitioner claims that she submitted evidence of her "professional achievements and significant contributions to the business industry," the record does not corroborate this claim. As previously noted, several letters merely describe a business relationship the Petitioner is claimed to have cultivated with various business owners, while others reference the Petitioner's professionalism and good work ethic. At best, these letters indicate that the Petitioner benefitted her prior employers through the work she did. However, none describe specific achievements and significant contributions to an industry or field as a whole. Because the record does not contain evidence that the Petitioner was recognized for achievements and significant contributions to her industry or field, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

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, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.