U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25937010

Date: MAR. 22, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a tourism entrepreneur, seeks second preference immigrant classification as a member of the professions with an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner had not established eligibility as either an advanced degree professional or as an individual of exceptional ability and 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. 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, petitioners 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 definition:

> *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.

In addition to the definition of "advanced degree" indicated above, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B), provides that petitioners present "[a]n official academic record showing that the alien 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 alien has at least five years of progressive post-baccalaureate experience in the specialty."

Furthermore, the regulation at 8 C.F.R. § 204.5(k)(2) states: *"[e]xceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." Moreover, 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. Petitioners 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). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether or not the petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

Next, petitioners must demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioners show:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Advanced Degree

The Director acknowledged the Petitioner's receipt of a bachelor's degree in 2008. However, the Director determined the Petitioner did not demonstrate her possession of at least five years of progressive post-baccalaureate experience in the specialty to qualify as an equivalent to a master's degree. Specifically, even though the Petitioner submitted employment letters, the Director found the letter from [redacted] did not indicate whether the Petitioner was employed in a full-time capacity thereby showing she had at least 60 months of full-time progressive post-baccalaureate experience, either individually or in the aggregate.

In addition, the Director pointed to discrepancies and inconsistencies in the education and experience evaluations; specifically, the evaluations listed different job titles and duties compared to the actual employment verification letter from [redacted] The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead

[1] *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 us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Moreover, the Director noted that "both evaluators inaccurately evaluated the petitioner's education and work experience" by claiming three years of relevant work experience is equivalent to one year of education. Ultimately, the Director concluded the evaluation and employment letters "do not appear to be credible resources as evidence" and found the Petitioner did not demonstrate she possessed the equivalent of a master's degree.

On appeal, the Petitioner asserts that "[a]s confirmed by [her] formal [*sic*] employer she has at least five years of full time progressive experience in tourism management." Although employment letters from [redacted] indicate cumulative full-time employment from January 2008 to October 2012, they do not amount to five years of full-time experience. Furthermore, as indicated above, the employment letter from [redacted] does not indicate whether the Petitioner was employed in a full-time capacity or specified the number of hours or type of employment arrangement. Furthermore, the Petitioner has not overcome, or even addresses, the Director's specific findings regarding the discrepancies and inconsistencies in the evaluation letters. *Ho*, 19 I&N Dec. at 591-92.

As discussed above, the Petitioner did not provide documentation with sufficient, credible information establishing she at least five years of progressive post-baccalaureate experience reflecting the equivalent to a master's degree. Accordingly, we agree with the Director the Petitioner did not demonstrate her eligibility as a member of the professions with an advanced degree.

B. Exceptional Ability

At the outset, the record does not reflect the Petitioner's claim of eligibility as an individual of exceptional ability at either initial filing or in response to the Director's request for evidence. However, the Director evaluated the Petitioner's eligibility as an individual of exceptional ability based on the documentation contained in the record. As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined the Petitioner fulfilled only one criterion, official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A). In addition, the Director found the Petitioner did not satisfy the 10 years of full-time experience under 8 C.F.R. § 204.5(k)(3)(ii)(B), and the Petitioner did not submit documentation for the remaining four criteria under 8 C.F.R. § 204.5(k)(3)(ii)(C)-(F). On appeal, the Petitioner argues she qualifies for two additional criteria.

> *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).

The Petitioner asserts she "has more than 10 years of professional experience in her occupation" and references earlier discussed employment letters. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence 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."[2] Further, the regulation at 8 C.F.R. § 204.5(g)(1) provides evidence relating to qualifying experience or training

[2] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

shall be in the form of letters from current or former employers or trainers and shall include a specific description of the duties performed by the individual or of the training received. As previously discussed, her job letter from [redacted] does not specify whether the Petitioner was employed in a full-time capacity or has at least ten years of full-time experience.[3] Moreover, the employment letters from [redacted] account for less than five years of full-time experience. Here, the Petitioner did not show her aggregate employment from the three businesses amount to at least ten years of full-time experience. Accordingly, the Petitioner did not establish she meets this criterion.

Although the Petitioner claims eligibility for an additional criterion on appeal relating to recognition for achievements and significant contributions under 8 C.F.R. § 204.5(k)(3)(ii)(F), we need not reach this claim as she cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(k)(3)(ii). Moreover, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. As such, we reserve these issues.[4]

III. CONCLUSION

The Petitioner did not establish immigrant classification as a member of the professions with an advanced degree or as an individual of exceptional ability. Therefore, we need not reach a decision on whether, as a matter of discretion, she is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve this issue.[5] 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.

[3] The Petitioner also indicates her submission of an "Employment Record Book." Notwithstanding the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence in the form of letter(s) from current or former employer(s)," the document does not indicate full-time employment or experience.

[4] *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 alternate issues on appeal where an applicant is otherwise ineligible).

[5] *See Bagamasbad*, 429 U.S. 24 at 25; *L-A-C-*, 26 at 526 n.7.