U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27493401

Date: JUNE 9, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial manager, seeks classification as a member of the professions holding an advanced degree and 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). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for either EB-2 classification or the national interest waiver. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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). Meeting

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] 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.

Once a petitioner demonstrates EB-2 eligibility, 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,[2] 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 studied at [redacted] Brazil, from 2006 to 2010. Letters in the record indicate she worked in Brazil as a financial manager for [redacted] from July 2007 to January 2011; for [redacted] from April 2011 to August 2014; and for [redacted] from August 2014 to July 2017. The Petitioner entered the United States as a B-2 nonimmigrant visitor in July 2017. Since that time, she has remained in the United States, either as a B-2 visitor or as an F-1 student. She is the financial manager of a Florida company established by her spouse in 2019. She intends "to open a Financial Management Consultancy Office with a focus on . . . Financial Institutions and [the] Steel Industry."

A. Member of the Professions Holding an Advanced Degree

The Petitioner does not claim to have earned an advanced degree. She claims, instead, that her "academic background and 10 years of professional financial experience . . . are equivalent to a bachelor's degree from an accredited US higher education institution." The Petitioner submitted a translated academic transcript from [redacted] The transcript indicates that the Petitioner studied "Administration" for eight semesters from 2006 to 2010, but it also shows a "Course Completion" date in June 2021 and a "Graduation" date in July 2021.

A translated graduation certificate from a [redacted] official reads, in part: "[In] the official book has been recorded, on July 19, 2021, the Graduation of [the Petitioner] . . . in the Bachelor's Degree in Administration in order to register her school accomplishments, has successfully completed in the 2021 academic year, the Administration Course, in this University." A credential evaluation calls the degree "the equivalent of a U.S. Bachelor's Degree in Business Administration," which the Petitioner "successfully completed . . . on July 19, 2021."

[1] 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.
[2] *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).

While the transcript shows classes from 2006 to 2010, the university documents consistently indicate that the Petitioner completed and received her degree in July 2021, just three months before she filed the petition. The documents do not explain the 11-year gap between the coursework and the completion and awarding of the degree.

The Petitioner also submitted a translated certificate indicating that she completed a "Tax Analyst" course in 2013. The 2013 course consisted of 30 hours of instruction over six weeks, substantially less than the four years typically required for a baccalaureate degree, and the Petitioner did not submit any evidence to indicate that the "Tax Analyst" course certificate is equivalent to at least a baccalaureate degree.

In a request for evidence (RFE), the Director noted the unexplained "11 year gap between the course details and course completion," and stated that the Petitioner would need to submit additional evidence to establish that she held an advanced degree, or its defined equivalent, at the time she filed the petition. In response to the RFE, the Petitioner submitted copies of the same documents submitted previously. She did not explain the delay in receiving her degree.

The Director denied the petition, stating that the Petitioner had not explained the 11-year gap between her studies at [redacted] and her receipt of the degree.

On appeal, the Petitioner quotes the Director's comments about the "11-year gap" in her academic documents, and affirms that "she earned [her bachelor's degree] in June 2021," but the Petitioner does not explain the gap or acknowledge the consequences arising from those facts. The Petitioner maintains that she has "ten years . . . of experience," but the regulation at 8 C.F.R. § 204.5(k)(2) specifies that qualifying experience must "follow" receipt of a bachelor's degree. A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The Petitioner received her bachelor's degree only a few months before she filed the petition in October 2021. In the absence of clarifying information, corroborated by first-hand documentary evidence, the Petitioner has not shown that she accumulated at least five years of progressive post-baccalaureate employment experience before the filing date.

The Petitioner has not met her burden of proof to establish that, at the time of filing, she qualified as a member of the professions holding either an advanced degree or its defined equivalent.

B. Exceptional Ability in Business

The Petitioner initially claimed exceptional ability in business, but the Director determined that the Petitioner had not met her burden of proof to establish eligibility for that classification. On appeal, the Petitioner acknowledges that the Director "determined that the Appellant does not qualify as a professional [sic] of Exceptional Ability," but the Petitioner does not further address the issue or allege any specific error in the Director's decision. A petitioner must identify specifically any erroneous conclusion of law or statement of fact as a basis for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Therefore, the Petitioner has waived appeal on the issue of exceptional ability. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.

2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (holding that plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO); *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

In light of the above conclusions, the Petitioner has not met her burden of proof to show that she qualifies for the underlying EB-2 classification, either as a member of the professions holding an advanced degree or as an individual of exceptional ability. This determination is sufficient to determine the outcome of the appeal. Therefore, we reserve argument on the separate issue of eligibility for the national interest waiver. *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).

III. CONCLUSION

The Petitioner has not established eligibility for the underlying immigrant classification, which is a necessary qualification for the national interest waiver. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.