



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28429593

Date: OCT. 04, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur in the cosmetic industry, 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 Texas Service Center denied the petition, concluding the record did not establish the Petitioner's eligibility for the underlying EB-2 classification, her proposed endeavor's national importance, or that it would in the interest of the United States to waive the requirement of a labor certification. 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.

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.

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 at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² 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 eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion³, 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 has not asserted that she qualifies for the EB-2 classification as an advanced degree professional, nor does the record support such a finding.⁴ Regarding the Petitioner’s eligibility as an individual of exceptional ability, the Director’s decision contained contradictory statements. Specifically, the Director concluded the Petitioner met four of the relevant evidentiary criteria, but also stated that the evidence did not establish the Petitioner met at least three of the criteria. Upon de novo review, we conclude the Petitioner only meets one of the required criteria and therefore has not established eligibility for the underlying EB-2 classification as an individual of exceptional ability. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.⁵

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).

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/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).

⁴ The Petitioner provided an academic and experience evaluation from senior evaluator, [REDACTED] on behalf of GEO, an academic credential evaluation service provider. [REDACTED] did not analyze the academic equivalency of the Petitioner’s two-year foreign Título de Tecnólogo on its own. Rather, he concluded that this education combined with the Petitioner’s experience is the equivalent of a U.S. bachelor’s degree. Implicit within [REDACTED] evaluation is that the Título de Tecnólogo itself is not the equivalent of a U.S. bachelor’s degree.

⁵ When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); see also *Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

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)

The record contains evidence that in 2012, the Petitioner completed a two-year Título de Tecnólogo degree in marketing. Therefore, the Petitioner has met this criterion.

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 provided recommendation letters; however, none of the letters contain complete dates for when the Petitioner performed work for various clients, nor do the authors indicate the precise duties the Petitioner carried out such that we could determine whether her experience falls within the entrepreneurial occupation. Additionally, none of the letters state how much time the Petitioner spent on each project, nor do they indicate whether the Petitioner performed work on a full-time or part-time basis. Therefore, these letters do not satisfy the plain language of the criterion.

We reviewed the Petitioner's business documents, including her Brazilian-based business registration from 2004 and her more recently created Florida-based business. Although these documents support a finding that the Petitioner is a business owner, the documents do not contain sufficient details about the Petitioner's duties as a business owner such that we could assess whether she has experience in the entrepreneurial occupation. Even if we concluded that she has the requisite experience based solely upon business ownership alone, these documents would not establish eligibility under this criterion, as they provide little indication that her work is full-time.

Accordingly, the Petitioner has not established that she meets this criterion.

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 has not provided evidence to establish that a license is required to perform marketing duties, sell hair and beauty products, or work as an entrepreneur. The Petitioner provided certificates of completion for various trainings and courses on topics, such as hair coloring, team management, salon marketing, and pharma cosmetics. Here the Petitioner appears to confuse the term "certificate" with the term "certification." The completion certificates do not represent a certification for a particular profession. We acknowledge the Petitioner has received training relevant to her work but conclude the evidence is insufficient to establish that she has a license to practice her occupation or a certification for a particular profession. Therefore, she has not established eligibility under this criterion.

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

The Petitioner submitted website printouts of average salaries for the positions of "CEO" and "Director" in Brazil, as well as various occupation printouts from the U.S. Bureau of Labor Statistics' website, which contain median salary ranges for positions such as market research analyst, training

and development manager, and management analyst. The Petitioner has not established that the duties of such positions and occupations are analogous to the duties she performs in marketing and entrepreneurship. There appears to be little differentiation between the size and scale of the companies from which the CEO and Director salary data derives. Additionally, the salary data does not appear to account for geographical locations within Brazil or the United States. As such, there is little concrete information with which to determine how her salary compares to others who perform the same or similar work in the same or similar location.

Furthermore, the Petitioner has not provided sufficient evidence of her salary or remuneration and how it demonstrates exceptional ability. We acknowledge the invoices, bank statements, and tax documentation; however, these documents do not sufficiently corroborate the Petitioner's earnings. For instance, the tax forms are self-completed and do not sufficiently indicate whether they were filed or accepted. As such, they are not a persuasive indicator of the Petitioner's salary or remuneration. While the invoices and bank statements may demonstrate ongoing business activity, the Petitioner has not identified which deposit transactions represent her salary or other remuneration. We also reviewed the letters from the Petitioner's accountant, which list the Petitioner's past salaries. Even if the salary statements were sufficiently corroborated with other evidence in the record, the letters do not suggest that she earned these salaries due to her exceptional ability and therefore they would not establish eligibility under this criterion.

For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

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

The Petitioner submitted evidence that her Brazilian business is a member of the Brazilian Association of the Personal Hygiene, Perfumery, and Cosmetics Industry (ABIHPEC). Although the Petitioner represents her company within ABIHPEC, it is not apparent from the record whether the Petitioner herself is a member or whether individual people are eligible to become members.

A "profession" includes 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 into the occupation.⁶ 8 C.F.R. § 204.5(k)(3). Therefore, a "professional association" may be defined as one that is comprised of members who practice a profession listed in section 101(a)(32) of the Act or perform an occupation that requires at least a baccalaureate degree or equivalent for entry into it. Regardless of a definition, the record contains little indication of ABIHPEC membership requirements. As such, there is insufficient information to establish that ABIHPEC is a professional association.

As previously explained, the evidence does not support a finding that the Petitioner holds a bachelor's or equivalent degree. Additionally, the record does not contain evidence suggesting that a degree is required to perform her marketing and entrepreneurial work. As such, her business' membership in ABIHPEC does not appear to be based on professional requirements. As currently constructed, the record is insufficient to conclude that ABIHPEC is a professional association or that the Petitioner herself, as opposed to her business, is a member of it. Accordingly, the Petitioner has not satisfied this criterion.

⁶ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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

The Petitioner provided evidence that she attended beauty fairs and exhibitions, as well as developed marketing presentations and promotional materials for her business. However, she has not explained how marketing her business or attending these events constitutes recognition for achievements and significant contributions to the industry or field. In other words, simply attending events and promoting one's business constitutes neither recognition for achievements or contributions, nor do these activities appear to have any effect on the industry or field. Likewise, the Petitioner's completion certificates demonstrate her commitment to continued training and business development, but do not constitute evidence of recognition for achievements and significant contributions to the industry or field.

The Petitioner asserts that her activities and work described in the recommendation letters "go[] far beyond her [c]ompany, and automatically constitute a recognition of achievement as well as a significant contribution to the industry, which are measured by her products['] presence worldwide." While we acknowledge this assertion, we do not find support for it in the record. The Petitioner sells customized beauty and hair care products to clients located in different countries. Even if we were to accept that selling to clients located in multiple countries constitutes a "worldwide" presence, we could not conclude that selling customized products or having international clients constitutes an achievement or significant contribution to the industry. Similarly, other authors attribute their business success to the Petitioner; however, the record does not contain evidence or details sufficient to support these assertions. In addition, even if such claims were corroborated, it is not apparent how they would constitute achievements or contributions to the field, as opposed to achievements or contributions to those who engage the Petitioner for her services.

Although [] the CEO of [] stated the Petitioner "increased the offer of high-performance capillary products in the market and generated new jobs, reflecting the increase in per capita income both in Brazil and in the USA," he does not provide information on which specific jobs the Petitioner created and where, nor does he offer evidence of any per capita income increases as a result of the Petitioner's products. [] a manager of [] states the Petitioner has "vast experience in the production and administration of patents" for her own and other companies, as well as has "contributed to promoting the startup of new companies." While we acknowledge these claims, the record does not contain evidence sufficient to support them. For example, the Petitioner has not provided documentation of any patents she produced or administered. Even if the authors corroborated their assertions, many of the identified successes would not constitute achievements or contributions to the field or industry, but rather to the clients and businesses who engage the Petitioner for her services.

As a matter of discretion, we may use opinion statements submitted as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* Here, the letters are general and conclusory in nature. They do not support a finding of recognition for achievements and significant contributions to the industry or field.

For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support the Director's finding that the Petitioner met at least four of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). We withdraw the Director's determination regarding three of the four criteria and conclude instead that the evidence supports a finding of eligibility under only one criterion. Therefore, the Petitioner has not established eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only one criterion, a final merits determination is not required. Nevertheless, we agree with the Director's conclusion that the record does not establish the Petitioner's experience is beyond that which is ordinarily encountered in the occupation.

III. CONCLUSION

The Petitioner has not demonstrated that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve arguments concerning eligibility under the *Dhanasar* framework. 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).

ORDER: The appeal is dismissed.