U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28785743

Date: OCT. 24, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner had not established eligibility for the underlying EB-2 immigrant visa classification as a member of the professions holding an advanced degree or an individual with exceptional ability. The Director also determined that the Petitioner did not establish that a waiver of the classification's job offer requirement would be in the national interest, as a matter of discretion. 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks employment in the United States in the field of fashion, asserting, among other things, that "fashion is a significant source of economic growth [and] continues to be critical to the United States, as its health has a significant impact on the economy in various ways."

As a preliminary matter, on appeal the Petitioner newly contends through counsel that she has "exceptional ability in the field of martial arts." She did not make this claim in the evidence before the Director. Counsel's brief also refers to the Petitioner as '[redacted]' without explanation, while the rest of the record suggests her name is [redacted]." Counsel also mistakenly and repeatedly references the Petitioner in the masculine pronoun case in her appeal brief and letter submitted in response to the Director's request for evidence (RFE). The record also lacks an explanation for this inconsistency as the Petitioner references herself in the feminine pronoun case. Thus, we must question the accuracy of counsel's assertions on appeal and whether the information provided is correctly attributed to this particular Petitioner. The Petitioner must resolve these 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).

The Petitioner did not assert nor does the record establish that she is a member of the professions holding an advanced degree. Therefore, she must show that she qualifies for the EB-2 classification as an individual of exceptional ability. To determine eligibility under section 203(b)(2)(A) of the Act,

[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).

"exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). To begin with, a petitioner must first provide documentation that satisfies at least three of six regulatory criteria in order to meet the initial evidence requirements for this classification. 8 C.F.R. § 204.5(k)(3)(ii). In denying the petition, the Director determined that while the Petitioner met the work experience and membership requirements at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (E), she did not satisfy any of the other criteria.

On appeal, the Petitioner asserts that she not only meets the work experience and membership criteria, but that she also satisfies the licensure and significant contributions criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (F), respectively.

However, on appeal she does not contest the Director's determination in the denial that she did not meet the criteria relating to academic records and salary at 8 C.F.R. § 204.5(k)(3)(ii)(A), and (D). Since the Petitioner does not challenge the Director's determinations in this regard, we consider these issues waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012), (stating when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

In response to the Director's RFE, the Petitioner asserted that she met this criterion through the provision of comparable evidence, acknowledging that her occupation does not require licensure. She maintained that "comparable evidence submitted herewith to establish that the [Petitioner] possesses a degree of expertise that is significantly above that ordinarily encountered in the field should be considered by USCIS." But she but did not identify the comparable evidence that the Director should consider. The Director determined that the Petitioner did not meet this criterion.

On appeal, the Petitioner reiterates her previous assertions presented to the Director in the RFE response, and does not identify or discuss the specific evidence, if any, in the record that should be considered as part of the comparable evidence determination. Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and conclude the Petitioner has not satisfied this criterion. *See Matter of R-A-M-*, 25 I&N Dec. at 657-658.

> *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 Director concluded that the evidence of record was insufficient to meet this criterion. On appeal, the Petitioner asserts that the Director erred in his determination, but she does not identify the basis for her assertions regarding error on the part of the Director. Rather, she generally contends (verbatim):

> The educational background, professional experience, and superb skills of the [Petitioner] enabled the [Petitioner] to contribute to *her* field and will allow *him* to continue to do so in the future. (emphasis added).

Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and find the Petitioner has not met this criterion.

In summary, the record supports the Director's finding that the Petitioner did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for the exceptional ability aspect of the EB-2 classification.

The Petitioner has not established that she is eligible for the EB-2 classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding the remaining issues, including whether she is eligible for a national interest waiver, as a matter of discretion. *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 M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Nonetheless, turning to the Petitioner's remaining claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner's statements reflect her intention to continue working in the field of fashion in the United States, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently extend beyond her future employer(s) and clients such that it would impact U.S. interests or the fashion industry more broadly at a level commensurate with national importance. In addition, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

III. CONCLUSION

The Petitioner has not demonstrated that she qualifies 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.

ORDER: The appeal is dismissed.