U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25683064

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, seeks classification as an individual of exceptional ability in the sciences, arts, or business. 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. 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 has exceptional ability in business or that he should receive a waiver of the job offer requirement in the exercise 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 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)(2) of the Act.[1]

[1] *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion, grant a national interest waiver if the petitioner shows:

- 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.

A petitioner seeking to be classified as an individual of exceptional ability in the sciences, arts, or business must submit evidence that meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). If the evidence provided meets at least three of the criteria, it undergoes a final merits evaluation to determine whether the petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2); *see generally* 6 *USCIS Policy Manual* F.5(B)(2).

II. ANALYSIS

The Petitioner seeks to continue running his import/export company in the United States as an individual of exceptional ability in business.[2] The Director concluded that the Petitioner submitted evidence that met two of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii):

- (B) Letter(s) from current or former employer(s) showing that the Petitioner has at least ten years of full-time experience in the occupation he is seeking to work in; and
- (D) Evidence that the Petitioner has commanded a salary or other remuneration for services which demonstrates exceptional ability.

Since 8 C.F.R. § 204.5(k)(3)(ii) requires evidence showing a noncitizen meets a minimum of three criteria, the Director found that this was insufficient to establish that the Petitioner is an individual of exceptional ability. On appeal, the Petitioner submits a brief stating that the Director used incorrect standards and reiterates his prior claim that he qualifies for the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E), membership in professional associations, and 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

A. Ten Years of Full-Time Experience

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), which the Director granted, requires evidence in the form of letters from former employers showing that the worker has at least ten years of full-time experience in the occupation that they are seeking exceptional ability classification for. The regulation at 8 C.F.R. § 204.5(g)(1) states that qualifying work experience should be documented using letters from former employers which include the writer's name, address, and title, as well as a specific description of the duties the worker performed.

According to the Petitioner, he has the following relevant work experience:

- [redacted] – October 2011 to present;
- [redacted] – 2017 to present;
- [redacted] – October 2013 to present;
- [redacted] April 2018 to present; and
- [redacted] – December 2004 to September 2015.

[2] The record does not establish, and the Petitioner does not claim, that he qualifies as an advanced degree professional.

To establish his eligibility under this criterion, the Petitioner provided:

- Letter from H-P-J- stating that the Petitioner was his partner in and the sales and business development director for [redacted] and describing his duties there from 2004 to 2012.
- Letter from T-B-N- stating that the Petitioner is the owner and president of [redacted] a real estate company, and describing his duties there from November 2011 through the letter date of January 2020.
- Incorporation and association documents pertaining to companies for which the Petitioner was a director, partner, and/or manager.

Neither of the letters provided state whether the Petitioner was employed on a full-time basis, as required for this criterion. Given the number of companies and projects the Petitioner claims to be working for simultaneously, this evidence does not establish that he worked for either [redacted] full-time. Furthermore, the corporate documents are not employer letters and do not state the Petitioner's duties or whether he was employed at those companies on a full-time basis. Because this criterion requires employer letters showing ten years of full-time work experience in the Petitioner's occupation, the evidence provided does not meet the criterion's requirements.

For the reasons above, we will withdraw the Director's finding that the Petitioner meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

B. Membership in Professional Associations

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires "[e]vidence of membership in professional associations." The regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as an occupation listed at section 101(a)(32) of the Act, 8 U.S.C. §1101(a)(32),[3] or an occupation whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent. The Director found that the [redacted], of which the Petitioner is a member, is not a professional association for purposes of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) because it does not restrict its membership to members of the professions, as defined in the regulation, and that the Petitioner therefore does not qualify under this criterion.

On appeal, the Petitioner states that the Director erred in using the 8 C.F.R. § 204.5(k)(2) definition of "profession" in defining a professional association, contending that it only applies to defining an advanced degree professional under 8 C.F.R. § 204.5(k)(3)(i). The Petitioner further contends that this definition of "profession" is separate and legally distinct from the definition of "professional" in the context of a "professional association" at 8 C.F.R. § 204.5(k)(3)(ii)(E) and states that if the regulations wished to define "professional association" they would have specifically done so, pointing to the definition of "professional" at 8 C.F.R. § 204.5(l) as support. However, the regulation at 8 C.F.R. § 204.5(k)(2) specifically states that its definitions apply throughout that section, not only to specific subsections. The fact that the 8 C.F.R. § 204.5(k)(2) definition of "profession" applies to advanced degree professionals does not preclude it from applying to professional associations as well.

[3] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

The Petitioner states that the Director erred by citing the 8 C.F.R. § 204.5(l)(2) definition of "professional," which applies to third preference visa petitions rather than the second preference visa petition in this case. He further claims that the existence of the definition at 8 C.F.R. § 204.5(l)(2) is evidence that the 8 C.F.R. § 204.5(k)(2) definition of "profession" is separate and different than the term "professional" in the context of professional associations. However, as stated above, the definition of profession at 8 C.F.R. § 204.5(k)(2) applies in this matter and we are bound to follow it.

The Petitioner further states that using the 8 C.F.R. § 204.5(k)(2) definition of "profession" to define a professional association imposes novel requirements, stating that there is a separate second preference classification for advanced degree professionals and "since it is not a requirement for the Petitioner to hold a baccalaureate degree, it must also logically flow that none of the qualifying criteria subject to the Alien of Exceptional Ability assessment would necessarily require a minimum degree of education . . . " We disagree. Because the regulations only require workers with exceptional ability to provide evidence of three of the six criteria, the individual criteria may have requirements which are not applicable to all exceptional ability workers. Furthermore, the regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of comparable evidence in cases where a criterion does not readily apply to a worker's occupation. The Petitioner has not attempted to do so here.

Additionally, the advanced degree professional classification requires workers to not only be members of the professions, but also to have an advanced degree or a baccalaureate degree accompanied by five years of progressively responsible experience in their occupation. It is therefore not inclusive of all professional workers and does not preclude the application of the exceptional ability criteria to professional workers. We further note that the exceptional ability criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires "[a] license to practice the profession or certification for a particular profession or occupation." If the term "profession" was intended to have no particular meaning within the exceptional ability criteria, there would be no need to distinguish between a profession and other occupations in this instance.[4] The Petitioner has not provided sufficient justification for us to deviate from the 8 C.F.R. § 204.5(k)(2) definition of "professional" in the specific context of a "professional association" at 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner does not provide an alternative to the use of the 8 C.F.R. § 204.5(k)(2) definition of "profession" for this criterion, except to state that the various organizations he belongs to are "professional in nature." In examining the bylaws of [redacted] the Director correctly found that the organization is open to "all persons who are interested in furtherance of the purposes of the Corporation" and requires only a membership application and payment of an annual fee. We acknowledge that the bylaws state that [redacted] purpose is to "promote and foster the role of the import and/or export professional," but it is not apparent that this organization is comprised of professionals or centered on a profession as defined at 8 C.F.R. § 204.5(k)(2).

The Petitioner's evidence regarding [redacted] Brazil similarly does not establish that any of these organizations restrict membership to professionals or are otherwise

[4] Generally, every word and every provision in a statute or regulation should be given effect and none should needlessly be given an interpretation that causes it to be entirely redundant. *See, e.g., Kungys v. U.S.*, 486 U.S. 759, 778 (1988).

professional in nature. Therefore, the Petitioner has not shown that he is a member of a professional association, and so he does not qualify under 8 C.F.R. § 204.5(k)(3)(ii)(E).

C. Recognition for Achievements and Significant Contributions

On appeal, the Petitioner also claims eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires evidence that the petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to his industry or field.[5] To establish eligibility under this criterion, the Petitioner submitted letters of support and several articles regarding his professional career. The Director's denial concluded that the evidence did not establish that the Petitioner's work impacted or influenced his field, and so it did not establish the Petitioner's recognition was for contributions which were significant to that field.

The Petitioner's appeal brief states that the underlying petition contains "ample documentation" of his qualifications for this criterion. A review of this documentation, which largely consists of letters from coworkers and clients, indicates that the Petitioner is a highly capable and experienced business manager.[6] But while the record includes numerous examples of the contributions the Petitioner has made to individual companies he has worked with, such as increased efficiency and profits, it does not establish the significance of these contributions or achievements to the import/export field or industry.

For example, the letter from I-T- of [redacted] states that the Petitioner "elaborated and led the execution of our 'Go-To-Market' strategy which was of great significance to the field," but only provides examples of how this work was significant to [redacted] There is also no documentation in the record establishing that the [redacted] award that the Petitioner won twice has significance beyond that company and its distributors. The letter from J-A-F-, the mayor of [redacted] Brazil,[7] states that the Petitioner "attained a production increase for small and mid-sized fish producers," but does not quantify this increase or otherwise establish its significance to the import/export field. Similarly, the letter from A-L- states that his company's business relationship with [redacted] "is of the utmost importance for our industry" but does not specify why this is the case. The accompanying contract states that A-L-'s company provides fish processing services for [redacted] but does not explain why this constitutes a significant contribution to the import/export industry.

We acknowledge that the letters provided are highly complimentary about the Petitioner's skills and abilities. However, these are not achievements or contributions, but instead speak to the final merits determination of whether the Petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

[5] We note that even if this criterion were granted, the Petitioner cannot fulfill the initial evidentiary requirement of meeting three criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). However, in the interest of completeness, we will address the evidence provided by the Petitioner on appeal.

[6] While we may not discuss every document submitted, we have reviewed and considered each one.

[7] We note that J-A-F- is not a peer in the Petitioner's industry and appears to have written his letter as an individual rather than on behalf of the city of Assis. It is therefore not apparent that this letter constitutes recognition from peers, governmental entities, or professional or business associations, as required for this criterion.

The Petitioner has not established that he has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to his industry or field, and so he does not qualify under 8 C.F.R. § 204.5(k)(3)(ii)(F).

III. CONCLUSION

The Petitioner has not established that he meets three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), and therefore does not qualify for the exceptional ability visa classification. Accordingly, we need not provide a final merits determination to evaluate whether the Petitioner has a degree of expertise significantly above that ordinarily encountered in business and hereby reserve this issue. *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"). Similarly, we need not reach and will reserve the issue of whether the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. *Id.* The petition will remain denied.

ORDER: The appeal is dismissed.