U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29338003

Date: DEC. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive, 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 qualified for the underlying EB-2 classification. 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.

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

[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.

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 discretion[3], 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

Upon de novo review, we agree with the Director that the Petitioner has not established his eligibility as an individual of exceptional ability.[4] Although the Director concluded that the Petitioner met two of the relevant evidentiary criteria, we conclude he does not meet any of the required criteria. Accordingly, he has not established eligibility for a national interest waiver.

> 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 Petitioner has not submitted evidence for our consideration under this criterion. Therefore, the record does not establish 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)

Although the Director determined the Petitioner established eligibility under this criterion, we withdraw that finding. The Petitioner's evidence under this criterion consists of two letters from [redacted], one letter from the Petitioner's business co-owner, and documents evidencing that in 2008, the Petitioner became a co-owner and shareholder of a registered Brazilian business, [redacted].

[redacted] first letter is unsigned and his contact information, only an email address, does not appear to have a domain name related to the company, [redacted], whose logo appears at the top of the letter. It is not apparent who [redacted] is in relation to [redacted] or whether he has authority to write on the company's

[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 has not asserted that he qualifies as an advanced degree professional.

behalf. As the letter is unsigned and contains little verifiable information about the author, we cannot rely upon it as probative evidence under this criterion.

second letter contains a logo and states that the Petitioner worked for as an independent consultant since 2019. The letter contains a list of seven responsibilities the Petitioner had as an independent consultant. However, it does not explain what relationship has with , how he is aware of the Petitioner's duties and employment dates, or whether is the Petitioner's client or his employer. Further, the letter does not provide definitive start and end dates for the Petitioner's employment or clarify whether the Petitioner's consultant work was full-time. Accordingly, this letter does not meet the plain language of the criterion.

the Petitioner's business co-owner, wrote that since April 2008, the Petitioner has been his partner and administrator, Chief Executive Officer (CEO) and Chief Financial Officer (CFO). Although the letter provides a bulleted list of the Petitioner's responsibilities in this role, does not state when the Petitioner ended his employment as administrator, CEO, or CFO, nor does the letter state whether the Petitioner worked full-time. Additionally, based upon the similarity between their names, it appears that the Petitioner and are related. Without further explanation and evidence, the possible familial relationship between the Petitioner and the author calls into question the objectivity of a letter. For these reasons, we conclude that this letter is not sufficient to establish at least ten years of full-time experience.

As explained, we conclude that the Petitioner's evidence does not meet the plain language of regulation or establish that he has at least ten years of full-time experience in the occupation.

> 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 Director concluded the Petitioner did not submit evidence for consideration under this criterion. We understand the basis for this conclusion, as the evidence provided does not appear to be a license. The Petitioner submitted documentation indicating that is regulated under the authority of the Central Bank of Brazil, as well as that the Petitioner is a signatory for and a registered corporate controller of it. The Petitioner has not explained how this evidence constitutes a license or certification to practice the profession of chief executive. While these documents may demonstrate the Petitioner has authority over his company, they do not signify that a license is required to serve in the position of chief executive or that the Petitioner has such a license. Therefore, the Petitioner 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 a letter from accountant, , which lists the Petitioner's annual income from 2008 to 2018. It is unclear whether is the Petitioner's or employee, which is relevant, as it bears upon the objectivity of the evidence. Moreover, the accountant's claims regarding the Petitioner's salary are not corroborated by other evidence in the record, such as bank statements, income tax filings, and paystubs.

[redacted] concluded that the Petitioner's salary is substantially high, "considering the average monthly income received for professionals in the same job position in Brazil." The Director noted, however, that the Petitioner "did not submit probative comparative evidence to show that he has commanded a salary[] that demonstrates exceptional ability." We agree. The Petitioner referenced 2023 salary data from Glassdoor.com, which is not a proper comparison for salaries earned from 2008 to 2018. Even if the Petitioner had provided salary data for the same occupation and corresponding to the correct year(s) and geographic location, he would still need to explain how the data establishes that his salary demonstrates exceptional ability.

On appeal, the Petitioner asserts the Director erred in not considering the evidence as a whole, requesting acknowledgement that providing evidence to establish eligibility under this criterion is more complex for entrepreneurs and chief executives. The Petitioner offers little basis or explanation for this conclusion, but even if he had, the Petitioner has not explained how this would exempt him from providing relevant, credible, and probative evidence to support his assertions.

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)

Although the Director determined the Petitioner established eligibility under this criterion, we withdraw that finding. The Petitioner provided evidence to establish his memberships in the [redacted]. The letter evidencing his membership in [redacted] states that his membership will expire in January 2023. The Petitioner has not offered evidence to suggest that he renewed his membership. The Petitioner's [redacted] membership certificate states that it was awarded in 2022 but contains no membership expiration date. The Petitioner has not provided any further information about this certificate or its current validity, and we will not assume that his membership in [redacted] continues in perpetuity. The Petitioner must establish eligibility at the time of filing for the requested benefit and must continue to be eligible for the benefit through the adjudication of it. 8 C.F.R. § 103.2(b)(1). Accordingly, for the memberships to serve as evidence of eligibility under this criterion, they must continue to remain valid through the adjudication of the petition.

Even if the Petitioner's memberships in these organizations were valid at the time of filing and remained valid during the adjudication of this appeal, they would not establish his eligibility under this criterion. The Petitioner provided website printouts that explain what [redacted] are, but he has not provided information regarding the qualifications for membership in these organizations. "Profession" is defined as of 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.[5] 8 C.F.R. § 204.5(k)(3). It stands to reason that the word "professional" pertains to a profession and as such, a "professional association" is a more restrictive category than just any association. Here, the Petitioner has not offered sufficient evidence to establish the professional nature of the organizations of which he is a member. Accordingly, we conclude the Petitioner has not established his eligibility under this criterion.

[5] 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 Director determined that the Petitioner had not established eligibility under this criterion. We agree. The evidence is insufficient to demonstrate that the Petitioner has been recognized by peers, government entities, or professional or business organizations for achievements and significant contributions to the industry or field as a whole.

The recommendation letter authors commend the Petitioner's work; however, they do not provide any specific details that explain how the Petitioner's work is representative of recognition for achievements and significant contributions to the industry or field as a whole. To illustrate, [redacted] wrote that the Petitioner managed and maintained default rates for his employer; [redacted] wrote that the Petitioner reduced the default rate for [redacted] and increased its sales; and [redacted] stated the Petitioner increased sales at [redacted]. These authors do not explain with corroborative detail how the results the Petitioner achieved for his employer impacted the field or occupation of chief executives as a whole.

Although [redacted] wrote that the Petitioner adopted a "differential strategy," which resulted in a sales boom, the letter does not explain how the parties analyzed the sales to arrive at the conclusion that the Petitioner's strategy caused the boom. Moreover, the letter does not suggest the Petitioner developed the differential strategy but merely adopted it, nor does the evidence demonstrate how the strategy is different from other methods. While the letter states that the sales boom surprised the company's competitors and promoted the overall welfare of the city and its inhabitants, the author offers little evidence to substantiate his assertions.

[redacted] wrote about the Petitioner's capability of generating impressive revenue figures but does not state whether the Petitioner actually generated such figures. He states that the Petitioner's work in forming a commercial agreement between two companies had excellent results, amplified fraud prevention, and increased brand awareness, but he does not offer a detailed explanation of how this constitutes achievements and significant contributions to the industry or field.

Overall, the Petitioner has not submitted sufficient independent, objective evidence to corroborate the claims made in the support letters. The authors do not explain how the Petitioner's internal accomplishments have any relevance to the field or industry as a whole. While the Petitioner may have revolutionized a particular company, this does not demonstrate that he revolutionized or affected the industry or field as a whole.

The Petitioner submitted a 2023 award certificate for work he performed in 2021. The Petitioner did not provide any information about the significance of the award, how many people were considered for the award, and how many other people won the award. Furthermore, the certificate does not contain any information about the awarding entity or institution, nor has the Petitioner explained why he received this certificate two years after performing the award-winning work. Without more, we conclude that this award does not constitute an achievement or contribution to the industry or field.

The Petitioner submitted various press releases regarding [redacted] sales and success, including that it increased its sales during an economic crisis. The press releases quote the Petitioner in several instances but do not contain any information concerning the impact of [redacted] sales to the industry or field. Even if [redacted] sales had impacted the field or industry, these press releases do not attribute this success to the Petitioner. As such, this evidence does not demonstrate how the Petitioner has achievements or significant contributions in the field or industry as a whole.

Accordingly, we agree with the Director that the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support a finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). We conclude the evidence does not establish eligibility under any criteria. Therefore, the Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has not satisfied any of the criteria, a final merits determination is not required.

On appeal, the Petitioner asserts the Director did not consider all the evidence and applied a stricter standard of proof. However, as our above analysis demonstrates, the Petitioner's evidence does not establish his eligibility for the benefit sought. The Petitioner also asserts on appeal that the Director erred by not considering the merits of his eligibility for a national interest waiver. However, the Director's decision reflects a merits discussion of the Petitioner's eligibility for the underlying EB-2 classification, which is a threshold issue. Therefore, we do not find support for the Petitioner's assertion that the merits of his eligibility were not duly considered. As the Petitioner has not established his eligibility for the underlying EB-2 classification, discussing his eligibility under the Dhanasar framework would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not demonstrated that he 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 reason for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility for a national interest waiver. 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.