U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27462530

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, 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. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition. The Director concluded the Petitioner did not qualify for the EB-2 immigrant classification as an individual of exceptional ability and thus was ineligible for the benefit sought in the petition. 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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[1] 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 the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

[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).

II. ANALYSIS

As a preliminary matter, the Petitioner alleges through counsel on appeal that the Director "did not apply the proper standard of proof in this case, instead imposing a stricter standard, to [his] detriment." Except where a different standard is specified by law, the "preponderance of the evidence" is the standard of proof governing immigration benefit requests. *See Matter of Chawathe, 25 I&N Dec. at 375; see also Matter of Martinez, 21 I&N Dec. 1035, 1036 (BIA 1997); Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965).* Accordingly, the "preponderance of the evidence" is the standard of proof governing national interest waiver petitions. *See 1 USCIS Policy Manual*, E.4(B), https://www.uscis.gov/policy-manual. While counsel contends on appeal that the Petitioner has provided evidence sufficient to demonstrate his eligibility for the EB-2 classification and a national interest waiver, counsel does not further explain or identify any specific instance in which the Director applied a standard of proof other than the preponderance of evidence in denying the petition.

The Petitioner plans to offer commercial airline pilot services to U.S. employers and has provided evidence, including his airline pilot training certificates, resume, flight logs, and pilot licenses, as well as letters from colleagues and former employers to establish that he attended various airline pilot training programs offered at flight schools in order to work as a commercial airline pilot from 2000 through 2019.

The Petitioner consistently asserted that he is eligible for the EB-2 classification as an individual of exceptional ability and did not claim eligibility as a member of the professions holding an advanced degree. In denying the petition, the Director concluded, in part, that the Petitioner fulfilled the academic record, experience, and licensure criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (C). We agree.

As the Petitioner has satisfied the initial regulatory requirements at 8 C.F.R. § 204.5(k)(3)(ii), we will consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See 6 USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5. *See also Kazarian* v. *USCIS,* 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination). For the reasons provided below, we conclude that the Petitioner does not qualify as an individual of exceptional ability.[2]

In discussing the final merits of the Petitioner's claim of exceptional ability in the totality of the evidence, the Director provided a full discussion and analysis of the evidence in the record. He stated, among other things, that the Petitioner's training credentials, experience, and licensure as an airline pilot did not automatically render him an individual of exceptional ability because these types of qualifications are part of the normal course of employment and professional development in the field of aviation.

The Director acknowledged that the Petitioner submitted letters from colleagues and former employers who commended his expertise, training, leadership and management skills in the field of

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

aviation. He noted that the signatories of these letters also discussed how the Petitioner has competently performed his job and attest to his skillsets. In denying the petition, the Director concluded that the record did not support the Petitioner's contention that he possessed expertise significantly above that ordinary encountered in the sciences, arts, or business. C.F.R. § 204.5(k)(2).

On appeal, the Petitioner reiterates his accomplishments and professional achievements but does not provide new evidence in support of this criterion. For example, he emphasizes on appeal that:

> Throughout his career as a Commercial Pilot and through his various leading and critical roles such as Captain and First Officer, the Appellant has been able to succeed in successfully flying domestic and international flights, keeping up with flight plans, and conducting flight operations, among other key specialties. He has acquired experience and expertise in commercial airlines, flight operations, and security and punctuality.

These tasks appear to be in keeping with those typically performed by those employed in the "Commercial Pilots" occupation, which is the occupation listed by the Petitioner in Part 6 of the petition. *See* the Department of Labor's Occupational Information Network (O*NET) summary report for "Commercial Pilots" which may be viewed at https://www.onetonline.org/link/summary/53-2012.00. Without more, the Petitioner has not shown how the successful performance of these commercial pilot duties establish that he has been recognized for his achievements and contributions in the aviation field, or otherwise possesses expertise significantly above that normally encountered therein. For instance, in response to the Director's request for evidence (RFE) he contends:

> [I] stand out for my extensive experience as a pilot and ample knowledge in the implementation of new airplane models in different companies. I have great experience in running new flights to new destinations and new airports. I also have expertise in flight crossing over mountain ranges in South America and implementation of new [U.S] routes. . . .

Though he has provided reference letters, they were not accompanied by corroborative evidence showing the impact of the Petitioner's work in the field, such as examples of the implementation of his piloting or training strategies, methodologies or innovations, or how the Petitioner's work has otherwise been recognized outside of organizations where he has been employed. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376.

Here, the Petitioner has not adequately explained the nature of his specific contributions to the field of aviation, supported by documentary evidence. Rather, on appeal he reiterates that he is an accomplished pilot with many years of experience and references previously submitted evidence that demonstrates that he meets at least three of the six criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii). But he does not sufficiently address the final merits determination set forth under *Kazarian* or adequately explain how the Director erred in his analysis.

Upon review of the record, we agree with the Director that the Petitioner has not established that he possesses a degree of expertise significantly above that ordinarily encountered in the field of aviation.

The Petitioner has not explained how his academic achievements, and his license, both required for entry into the profession, demonstrate his exceptional ability. The Petitioner is a highly qualified and well-trained pilot with many years of experience. However, this alone is insufficient to establish that the Petitioner qualifies as an individual of exceptional ability. The Petitioner has not shown that he is as an individual of exceptional ability, and he has not asserted that he is an advanced degree professional. Therefore, the documentation in the record does not establish eligibility for the underlying EB-2 classification.

III. NATIONAL INTEREST WAIVER

As explained in the legal framework above, 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 the Petitioner has not established this threshold issue, the remainder of the Petitioner's arguments need not be addressed. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach whether he meets the three prongs under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

IV. CONCLUSION

As the Petitioner has not established that he qualifies for the underlying EB-2 classification, he has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.