U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25786965

Date: MAR. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks classification as either an advanced degree professional or an individual of exceptional ability. 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. 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 Petitioner did not submit the required initial evidence, specifically a completed ETA Form 9089, Application for Permanent Employment Certification, or an ETA Form 750B, Application for Alien Employment Certification (labor certification) and as such did not demonstrate eligibility for the benefit sought. Moreover, the Director found that the record did not establish either the Petitioner's eligibility for the EB-2 immigrant classification or that a waiver of the classification's job offer requirement would be in the national interest. 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

Individuals seeking immigration benefits in the United States must request benefits by filing the appropriate forms with USCIS. *See* 8 C.F.R. § 103.2(a)(1). Individuals must follow the relevant form instructions and submit any initial evidence required by the relevant regulations. *Id.*; 8 C.F.R. § 103.2(b)(8)(ii). A benefit request submitted without the required initial evidence may be denied on that basis. 8 C.F.R. § 103.2(b)(8)(ii).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. In support of this request for a waiver of the job offer requirement, a petitioner must submit a labor certification in duplicate and evidence to support the claim that the waiver would be in the national interest. *See* 8 C.F.R. § 204.5(k)(4)(ii).

While neither 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 USCIS may, as a matter of discretion,[1] 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 Director found that the Petitioner did not establish eligibility for the benefit sought, because he did not submit the required initial evidence of a completed labor certification, despite the Director's issuance of a request for evidence (RFE) advising the Petitioner of this and other deficiencies in the filing and requesting that the Petitioner submit the required evidence. The Director also found that the Petitioner did not establish that he qualifies for the EB-2 classification or that he is eligible for a waiver of the classification's job offer requirement.

The Petitioner submits this appeal, along with a brief statement and a copy of the evidence previously submitted in support of his I-140 Petition.[2] The Petitioner still does not include a completed labor certification, although he was put on notice of this requirement by the Director's RFE and the Director's decision denying the I-140 Petition.

As an initial matter, we note that the Petitioner does not appear to understand the legal requirements of the immigrant classification he seeks. The Petitioner does not make a specific claim that he is an individual of exceptional ability nor that he possesses an advanced degree. Further he does not make a specific claim that he merits a waiver of the classification's job offer requirement under any of three required prongs of the *Dhanasar* framework. Rather, he submitted a letter in his initial I-140 filing in which he states, "I recently saw that as pilots we can apply for the green card, because in the USA there is a huge lack of pilots due to lots of retirements in the airlines." Although he submitted evidence that he is a licensed pilot and has worked in the occupation, he did not submit a cover letter or brief describing the evidence submitted and how it establishes that he is eligible for both 1) the EB-2 immigrant classification, and 2) a waiver of the job offer requirement.

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[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).

[2] On his Form I-290B, the Petitioner indicated that he would submit a brief and/or additional evidence within 30 calendar days of filing the appeal. To date, we have not received any brief or additional evidence. As such, we will consider the appeal based on the record as it stands.

He states on appeal that he "can't talk to someone to find where the problem is or to give me a chance to correct my mistakes if I made some." But the Director issued an RFE that specifically identified the legal and evidentiary requirements of the immigrant classification that the Petitioner seeks, the deficiencies in the evidence he submitted, and provided him an opportunity to submit the missing information and documents. The Petitioner submitted a response to the RFE but did not include one of the basic pieces of required initial evidence—a completed labor certification in duplicate. *See* 8 C.F.R. § 204.5(k)(4)(ii).

This alone is a sufficient basis for a denial of the petition.[3] 8 C.F.R. § 103.2(b)(8)(ii). The Petitioner bears the burden to properly complete and file his petition with all initial evidence required by the regulations and to demonstrate his eligibility for the benefit sought. 8 C.F.R. § 103.2(b)(1). Nevertheless, we have reviewed the evidence in the record as to whether it establishes the Petitioner's eligibility for a national interest waiver. We discuss each eligibility requirement in turn so that he may better understand the basis for the Director's denial and our decision to dismiss after de novo review.

A. Qualification for EB-2 Classification

As discussed above, to qualify for the underlying EB-2 classification, a petitioner must establish eligibility as either a member of the professions holding an advanced degree, or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

The Director determined that the Petitioner did not establish his eligibility for the EB-2 classification under either basis. The Director noted that the Petitioner "indicates he has a degree and has 3 of the [criteria] listed for the classification sought," but concluded that the Petitioner did not clearly state under which basis—advanced degree professional or individual of exceptional ability—he seeks to qualify. As such, the Director could not determine "which set of criteria should be used to evaluate if he is eligible."

The Petitioner does not appear to understand this conclusion. On appeal, the Petitioner states as to this finding, "If I understood that right, I got what they are looking for, because they need minimum 3 [criteria], which I got. But they don't understand why I'm applying. When I sent the form, I explained why and I put the job for what I'm looking for on the form."

We agree with the Director that the Petitioner did not explicitly state whether he seeks EB-2 classification as an advanced degree professional or an individual of exceptional ability. Upon review of the record, we also conclude that he has not demonstrated that he qualifies under either basis.

1. Member of the Professions Holding an Advanced Degree

To qualify as an advanced degree professional, an individual must possess a "United States academic or professional degree or a foreign equivalent degree" above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). Additionally, the regulations provide that a U. S. bachelor's degree or the foreign

[3] Although the Director issued an RFE and provided the Petitioner the opportunity to supplement the record, USCIS may in its discretion deny a benefit request, without first issuing an RFE, for lack of initial required evidence. 8 C.F.R. § 103.2(b)(8)(ii).

equivalent followed by at least five years of progressive experience in the specialty is equivalent to a master's degree. *Id.*

The Petitioner submitted a "general baccalaureate diploma" awarded in 2002 by the [redacted] in France. However, the Petitioner did not submit transcripts, other academic records, or a credential evaluation that would establish that this degree is the equivalent of either an advanced degree or a bachelor's degree in the United States. 8 C.F.R. § 204.5(k)(3)(i)(A)-(B). Nevertheless, we reviewed the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE)[4] to determine the U.S. equivalent of the Petitioner's general baccalaureate diploma. The database confirms that this level of education is comparable to completion of senior high school in the United States.[5] As such, the Petitioner does not qualify as an advanced degree professional.

2. Individual of Exceptional Ability

"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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[6] If a petitioner does so, 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. We evaluate each of the regulatory criteria in turn.

> *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).

As stated above, the Petitioner submitted a "general baccalaureate diploma" from the [redacted] in France. However, the Petitioner did not submit any documentation to establish that the [redacted] is a "college, university, school, or other institution of learning." Moreover, the Petitioner did not submit transcripts or other records that would establish what level of education this academic record represents. Finally, the Petitioner did not establish that this diploma relates to his claimed area of exceptional ability. As noted above, the diploma is the equivalent of a high school degree and does not appear to relate to his ability as a pilot.

As such, the Petitioner has not established eligibility under this criterion.

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[4] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano,* No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[5] *See* https://www.aacrao.org/edge/country/france for information regarding the education system in France.

[6] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

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 submitted letters from current and former employers demonstrating that he has been employed as a pilot. However, only one of the letters, covering the period from May 2012 to April 2019, confirms that he was employed full-time. Therefore, the Petitioner has not established that he has at least ten years of full-time experience in the occupation.

As such, the Petitioner has not established eligibility under 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 submitted evidence of his Canadian Aviation License, his medical certificate from the Federal Aviation Administration (FAA), and a letter from the FAA verifying that his foreign license is valid and was current as of the date of the letter.

As such, the Petitioner has 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 did not submit evidence relating to this criterion. In his response to the Director's RFE the Petitioner stated as to this requirement that his salary is subject to a union agreement and as such that he earns "the same salary as my colleagues."

As such, 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 of his membership in the Air Canada Pilots Association and his membership in the College of Professional Pilots of Canada.

As such, the Petitioner has established eligibility under this criterion.

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 did not submit evidence relating to this criterion. In his response to the Director's RFE the Petitioner stated as to this requirement, "I have nothing to give you."

As such, the Petitioner has not established eligibility under this criterion.

Therefore, the Petitioner has established that he satisfies only two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination to evaluate whether the Petitioner has achieved the degree of expertise required for exceptional ability classification. As such, the Petitioner does not qualify as an individual of exceptional ability.

Having determined that the Petitioner does not qualify as either an advanced degree professional or as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated his eligibility for the underlying EB-2 classification.

B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether he is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement.[7]

However, we note that the Petitioner also has not established his eligibility for a national interest waiver. *Matter of Dhanasar* provides that USCIS may grant a national interest waiver if an individual demonstrates that their proposed endeavor has both substantial merit and national importance, that they are well-positioned to advance their endeavor, and that on balance waiving the job offer requirement would benefit the United States. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner does not claim nor provide sufficient evidence to establish that his proposed endeavor of working as an airline pilot has either substantial merit or national importance. Rather, he simply states that, "I recently saw that as pilots we can apply for the green card, because in the USA there is a huge lack of pilots . . . ." The fact of a shortage of U.S. workers in an occupation is not evident of a related endeavor's national importance. In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead we focus on the "specific endeavor that the [noncitizen] proposes to undertake." *See id.*

The evidence in the record includes the Petitioner's resume, diploma, work experience letters, and license and professional membership information. This evidence is insufficient to establish that the Petitioner is well-positioned to advance his endeavor, as he acknowledges that he is not licensed to pilot aircraft in the United States. *Id.* at 890. Finally, the Petitioner does not claim nor provide sufficient evidence to establish that waiving the job offer requirement would benefit the United States. *Id.*

[7] *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 alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner did not submit the initial evidence required by the regulations to establish his eligibility. 8 C.F.R. §§ 103.2(b)(8)(ii), 204.5(k)(4)(ii). Further, the Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2), (k)(3). Finally, the Petitioner has not established eligibility for a national interest waiver. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.