U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28963549

Date: NOV. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an automotive technician, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. 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 Petitioner had not established eligibility as an individual of exceptional ability and that a waiver of the required job offer, and thus of the labor certification, 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

To establish eligibility for a national interest waiver, petitioners must 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. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: *"[e]xceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. Petitioners must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id*. The officer must determine whether or not the individual, by a preponderance of the evidence, has

demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

Petitioners must also demonstrate the 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 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

As indicated above, petitioners must meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). In denying the petition, the Director determined the Petitioner fulfilled only two of the criteria. On appeal, the Petitioner maintains he meets an additional two. After reviewing the evidence, we conclude the record does not support of finding of his eligibility for at least three.

> *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 argues he submitted a copy of his diploma and an evaluation of his education and work experience from G-P-, who determined that "his degree, along with his work experience is equivalent to an [sic] U.S. bachelor's degree in automotive technology." Furthermore, the Petitioner asserts 6 *USCIS Policy Manual*, *supra*, at F.5 states that "officers may favorably consider a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-documented case for such an equivalency determination that is based solely on the noncitizen's foreign degree(s)."

However, 6 *USCIS Policy Manual*, *supra*, at F.5 makes no mention of the Petitioner's assertions. Regardless, under the preponderance of the evidence standard, the evidence must demonstrate that the Petitioner's claim is "probably true." *Chawathe*, 25 I&N Dec. at 376. We consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The issue for this criterion is whether an individual offered "[a]n 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" as required by the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).[2] Here, the Petitioner submitted a copy of a "Certificate" from the [redacted] "certif[ying] that the student [the Petitioner] . . . in the school year of 2001

[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] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

concluded the Youth and Adult Education Course with Individualized Care and Flexible Attendance at High School level." Moreover, the cetificate lists the following completed courses: Portuguese, Mathematics, History, Geography, Chemistry, Physics, Biology, and English. As discussed in the Director's decision, the Petitioner did not show that his certificate relates to his area of exceptional ability – automotive technology. Rather, the certificate appears to relate to the equivalent of a general high school education. Furthermore, while G-P- opined that the Petitioner holds the equivalency of a bachelor's degree in automotive technology, even if credible, the fact remains that the Petitioner did not provide "[a]n 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," regardless of the factoring in of his work experience. Because the underlying academic record does not fall within automotive technology, the Petitioner did not establish he provided the required evidence in his area of exceptional ability.

For these reasons, the Petitioner did not establish he meets 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 regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations."[3] The Petitioner indicates that he provided three recommendation letters and an expert opinion letter. While the recommendation letters praise the Petitioner for his skills and work, they do not indicate how he has been recognized for his achievements, nor do they explain how his contributions have risen to the level of "significant" consistent with this regulation. For instance, C-R-D-O-, C-F-, and L-A-A-R- described how the Petitioner developed a handcrafted technique in repairing dents while working for them. However, the letters do not show how his contributions have impacted or influenced the field or industry in a significant manner beyond his employers or clients. Likewise, the expert opinion letter from M-A-A- makes no mention of the Petitioner garnering recognition for his achievements or explaining how his contributions are viewed as being significant to the industry or field. Instead, M-A-A- repeats the statements from the recommendation letters and highlights the Petitioner's skills and abilities. Without detailed, probative information, the letters do not sufficiently demonstrate his recognition for achievements and significant contributions to the industry or field.

Accordingly, the Petitioner did not show he satisfies this criterion.

III. CONCLUSION

The Petitioner did not establish eligibility for any additional criteria. Accordingly, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification.[4] In addition, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under

[3] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).
[4] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

the *Dhanasar* analytical framework. Accordingly, we reserve these issues.[5] 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.

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof).