U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28424040

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner states that he is an industrial designer. He seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability or a member of the professions holding an advanced degree, 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 that the record did not establish that the Petitioner qualifies as an individual of exceptional ability or as a member of the professions holding an advanced degree. The Director further concluded that the Petitioner had not established 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.

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 because the Petitioner has not demonstrated that he qualifies for the underlying EB-2 visa classification. A the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a discretionary waiver of the job offer requirement under the three-prong framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *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).

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. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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]

(A) An official academic record showing the noncitizen's possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
(B) Letters from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the proposed occupation;
(C) A license to practice the profession or certification for the profession or occupation;
(D) Evidence of the noncitizen's receipt of a salary or other remuneration demonstrating exceptional ability;
(E) Proof of membership in professional associations; or
(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, a final merits determination is conducted 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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.

[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 aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[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).

II. ELIGIBILITY FOR EB-2 CLASSIFICATION

The issue to be addressed in this matter is whether the Petitioner has established eligibility for the EB-2 classification as either an individual of exceptional ability or as an advanced degree professional.

A. Exceptional Ability

At the time of filing the Petitioner did not claim eligibility for the EB-2 classification as an individual of exceptional ability, nor did he claim that he meets the requirements of at least three of the six categories listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Rather, the Petitioner provided an "Autobiographical Statement" in which he discussed his educational background and work history and broadly stated that he has a "background and [] extensive knowledge of architecture and industrial design." Although the Petitioner provided his certificate of general secondary education along with a corresponding transcript, he did not establish that the certificate was related to industrial design, the area in which he claims to have exceptional ability. Likewise, the Petitioner did not establish that any of the remaining submissions, such as a "letter of gratitude" and various certificates showing his completion of English courses in 2012 and 2013 and participation in an exhibition in 2017, satisfy at least three criteria listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

The Director issued a request for evidence (RFE) notifying the Petitioner of these evidentiary deficiencies. However, the Petitioner did not provide further evidence establishing that he meets at least three of the six categories listed at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner merely acknowledged that the RFE sought evidence pertaining to his claimed exceptional ability, but he did not comply with that portion of the request, nor did he specifically claim that he qualifies as an individual of exceptional ability. In fact, the subject matter in the RFE response was limited to the Petitioner's claimed eligibility for a national interest waiver pursuant to the three-prong framework set forth in *Dhanasar*. Accordingly, in denying the petition the Director noted the Petitioner's failure to provide the requested evidence and concluded that the Petitioner did not establish that he is an individual of exceptional ability. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner claims that he met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), and (F), pointing out that he previously submitted a "full transcript from [redacted] University," a "Thank you letter" from [redacted] and a certificate showing that he participated in and contributed towards the organization of a 2017 exhibition.

We conclude that the Petitioner has not demonstrated that he meets the criterion listed at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires submission of an official academic record showing that he was awarded a degree or diploma relating to his claimed area of exceptional ability. The Petitioner states that he "received a 'final state attestation' as well as passing professional practice" and claims that these qualifications along with his university transcript show that he "passed 122 credits," thereby attaining a level of education that the Petitioner states is equivalent to a U.S. bachelor's degree. However, the Petitioner's Form 750 Part B, Application for Alien Employment Certification, and personal statement are inconsistent with his claim on appeal. Namely, in completing the employment certification application the Petitioner stated that he attended the [redacted] University for only three years and wrote "incomplete bachelor's degree" when asked to list his degrees or certificates;

this information is consistent with the Petitioner's personal statement where he explained that he "took an academic leave" in May 2019, prior to attaining a bachelor's degree. The Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the record contains a translated document titled "Reference," which identifies the Petitioner as "a Bachelor student of [redacted] University," this document does not establish that the Petitioner completed a bachelor's degree program from the named institution, nor does the record contain a diploma issued by that institution showing that a bachelor's degree was awarded to the Petitioner. In fact, the translated "Reference" document lists "01.09.2016 – 30.06.2021" as the "duration of study." By virtue of entering the United States as a J-1 nonimmigrant in May 2019, as the Petitioner claims he did, completion of the stated period of study would have been impossible. Therefore, the Petitioner has not provided sufficient evidence establishing that he met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

In sum, the Petitioner focused on three criteria as the basis for claiming eligibility under the exceptional ability classification. Because the Petitioner must show that he meets the requirements of all three criteria and the analysis explains that he did not overcome the Director's decision regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), he has not established that he satisfied at least three criteria at 8 C.F.R. § 204.5(k)(3)(ii) as required to merit classification as an individual of exceptional ability. As such, further discussion of the two remaining criteria would serve no meaningful purpose.[4]

B. Advanced Degree Professional

The Petitioner did not claim to be an advanced degree professional at the time of filing or in response to the RFE. As noted above, when completing his labor certification application, the Petitioner described the status of his bachelor's degree as "incomplete" and listed the three-year period from September 2016 until September 2019 as the dates he attended the [redacted] University to pursue a degree in architecture. This information is consistent with the Petitioner's personal statement, where he stated that he started his "college student life" in 2016, did an internship in 2019 where he "was involved in all the processes of the architect's work," and ultimately "took an academic leave" in 2019 when he came to the United States pursuant to a J-1 nonimmigrant visa. Although the Petitioner further stated that his "future plans include continuing my studies and enrolling in a Master's Degree program," he made no mention of when or where he plans to complete his undergraduate studies to obtain a bachelor's degree, which is presumably a prerequisite for a master's degree.

The record also contains several certificates as well as a transcript showing the Petitioner's completion of 122 credits at the [redacted] University. We note, however, that these documents do not demonstrate the Petitioner's qualification for the underlying EB-2 visa classification as an advanced degree professional. Namely, the certificates were issued prior to September 2016 and thus they predate the Petitioner's university attendance, and the transcript was not accompanied by an English translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation

[4] Even if the Petitioner had satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), the record lacks sufficient evidence establishing that he has a license or certification to practice his profession as required by 8 C.F.R. § 204.5(k)(3)(ii)(C) or that he has been recognized for achievements or significant contributions in his field as required by 8 C.F.R. § 204.5(k)(3)(ii)(F). The "Thank you letter," certificate of participation in a 2017 exhibition, and claim that the Petitioner "passed professional practice" do not establish that he met either of the two listed criteria.

is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* Because the Applicant did not submit a properly certified English language translation of the transcript as required, we accord it no weight. Moreover, as noted above, according to the Petitioner's personal statement and responses he provided on the Form ETA 750 Part B, the Petitioner did not earn a bachelor's degree; as such, even if the transcript was in compliance with the relevant regulatory provisions, it would not be sufficient to establish that the Petitioner is an advanced degree professional. *See* 8 C.F.R. § 204.5(k)(2).

The RFE notified the Petitioner that the evidence he submitted shows that he does not have either a U.S. advanced degree (or its foreign equivalent) or a baccalaureate degree (or its foreign equivalent) followed by at least five years of progressive post-baccalaureate work experience in the specialty and that he therefore does not qualify as an advanced degree professional. The RFE also discussed the Petitioner's résumé,[5] noting that even if he had attained a baccalaureate degree, his work history does not show the required post-baccalaureate work experience in the specialty. Because the Petitioner's RFE response only discussed his claimed eligibility for a national interest waiver, the Petitioner did not establish eligibility for the EB-2 classification as an advance degree professional.

On appeal, the Petitioner points out that he entered the [redacted] University in 2016, noting that he "passed professional practice" and "received a 'final state attestation,'" which he contends is "evidence that his studies concluded." He also points to his transcript, which shows that completed 122 credits while attending the university; he argues that "122 credits is a substantial enough amount to raise the presumption that [he] received a degree from the institution, an inference supported by the fact that he received a 'final state attestation.'" As discussed above, the Petitioner has stated both in his personal statement and on the Form ETA 750 that he has not obtained a bachelor's degree or its foreign equivalent. And although he argues that "[t]aken together, these credentials are clearly equivalent to a U.S. baccalaureate degree," he does not cite to a precedent decision or USCIS policy in support of this argument. Therefore, the Petitioner has not established that he is an advanced degree professional.

In light of the discussion above, we conclude that the Petitioner has not demonstrated qualification for the underlying EB-2 visa classification either as an advanced degree professional or as an individual of exceptional ability. As noted earlier, because this threshold issue is dispositive of the appeal, we will not address the Petitioner's appellate arguments regarding his eligibility for a discretionary waiver of the job offer requirement under the three-prong framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.

[5] The Director observed that according to his résumé, the Petitioner had the following employment history: self-employment as a part-time architect from September 1, 2018, to May 10, 2019, working as a waiter for approximately two months in 2019, as a driver for approximately three months in 2020, and as a manager for [redacted] from June 2020 to March 2021 and again from October 2021 to April 2022.