U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20256953

Date: MAR. 23, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mental health assistant, 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. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established his 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.

On appeal, the Petitioner asserts that he is eligible for exceptional ability classification and for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Exceptional 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. A petitioner 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).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

Because he has not indicated or established that he qualifies as a member of the professions holding an advanced degree, the Petitioner 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 that the Petitioner did not fulfill any of the regulatory criteria. On appeal, the Petitioner maintains that he satisfies four criteria. After reviewing the evidence, we conclude that the record does not support a finding of his eligibility for at least three criteria.

> *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).

On appeal, the Petitioner contends that he "submitted an official certificate of training and completion from [redacted] Hospital (on the job training) in Mental Health Assistance. Which falls under the category of mental Health Tech since it's basically the same duties and responsibilities carried out in the field." The record reflects that he provided a "Certificate of Training and Completion" from the [redacted] certifying that the Petitioner "has successfully completed 180 days (June – November 2008) on the job training in Mental Health Assistant." The issue for this criterion is whether an individual provided "[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).[4] The Petitioner, however, did not establish that the presented certificate represents an "official academic record" consistent with this regulatory criterion. In addition, the Petitioner did not demonstrate that [redacted] or [redacted] qualify as "a college, university, school, or other institution of learning" pursuant to this regulatory criterion; he did not support the record with background information or other evidence reflecting status as a college, university, school, or other institution of learning.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] *See also* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual.

Furthermore, the Petitioner claims that he "also submitted [a] [redacted] Senior High School Certificate which is a basic requirement for mental health technician job in the United States." The record reflects that he offered a "[redacted] Senior School Certificate" from the [redacted] Examinations Council" indicating that the Petitioner "sat the [redacted] Senior School Certificate Examination and obtained the results." The Petitioner, however, did not show that the certificate constitutes an "official academic record." Moreover, the Petitioner did not demonstrate that the [redacted] Examinations Council is tantamount to "a college, university, school, or other institution of learning" rather than an entity that administers testing. In addition, the Petitioner did not establish that the evidence "relat[es] to the area of exceptional ability." While he claims that the certificate "is a basic requirement for mental health technician job in the United States," the Petitioner did not provide any supporting evidence to corroborate his assertions. In fact, the certificate lists general high school subjects, such as social studies, English language, mathematics, integrated science, economics, geography, and government, rather than an official academic record relating to his area of exceptional ability in mental health assistance.

Moreover, the Petitioner asserts that he "provided a [bachelor of science] Procurement and supply chain management, which fit perfectly in the field of mental health technician." The record reflects that he submitted a certificate from the University of Education, [redacted] certifying that the Petitioner received a bachelor of science in "Procurement and Supply Chain Management" and a signed registrar transcript from the University College of Management Studies. However, the Petitioner did not demonstrate that his bachelor of science degree "relat[es] to the area of exceptional ability" of mental health assistance. The Petitioner did not show through documentary evidence how his degree in procurement and supply chain management corresponds to the mental health field. The transcript of courses focuses on business, finance, and economic related subjects rather than the mental health arena.

Finally, the Petitioner contends that he presented a "transcript from [redacted] University where I was studying Post-baccalaureate Biology (Pre professional health)." The record reflects that the Petitioner provided an "Advisor Transcript." However, the Petitioner did not show that the document represents an "official academic record" from [redacted] University, nor did he establish that he received "a degree, diploma, certificate, or similar award" from [redacted] University. In fact, the record contains the Petitioner's Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, indicating a program ending date of May 2022 to receive his degree. Similarly, the Petitioner submitted an "AMCAS Report – 2021 Entering Class" from the Association of American Medical Colleges (AAMC) reflecting his academic record. Although the report reflects his enrollment at [redacted] University, it indicates: "No Degree Expected." Thus, the Petitioner has not received a degree, diploma, certificate, or similar award from [redacted] University.[5]

Without evidence of official academic records of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to his area of exceptional ability, the Petitioner has not sufficiently shown that he meets this criterion.

[5] We note that the AAMC report indicates that the Petitioner previously received a bachelor of science degree from the University College of Management Studies in "Business Administration."

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 claims that he "provided a document and a bank statement which is evidence that [he has] commanded a salary or other remuneration for service." The record reflects that the Petitioner submitted copies of his paystubs from [redacted] and letter from [redacted] confirming the Petitioner's employment as a mental health enhanced supported housing residential technician.[6] The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires "[e]vidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability."[7] While the evidence indicates that he earned a salary from [redacted] the Petitioner did not establish that he commanded a salary "which demonstrates exceptional ability" consistent with this regulatory criterion. The Petitioner, for instance, did not offer comparative wage information to show the significance of his earnings, such that he commands a salary commensurate with exceptional ability. Without further evidence, simply submitting evidence of remuneration from an employer is insufficient to meet this criterion.

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies this criterion.

III. CONCLUSION

The Petitioner did not establish eligibility for any of the criteria discussed above. Although the Petitioner claims eligibility for two additional criterion on appeal relating to ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B) and recognition for achievements at 8 C.F.R. § 204.5(k)(3)(ii)(F), we need not reach these further claims as he cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). Moreover, 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. 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 the *Dhanasar* analytical framework. Accordingly, we reserve these issues.[8] 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.

[6] Although he submitted copies of bank statements, the Petitioner did not explain how they show, nor do the statements reflect, any salary deposits from [redacted]

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

[8] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).