U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27441183

Date: AUG. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot in the aeronautic and aviation industries, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability 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 is 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. On appeal, the Petitioner contends that the Director ignored or minimized substantial evidence submitted in support of his petition and did not reach a proper conclusion regarding his qualifications and merits in his profession.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

"Profession" means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

"Exceptional ability" in the sciences, arts, or business 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. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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.[3]

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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[4], 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 Petitioner proposed to work in the United States as an airline transport pilot. As indicated above, the 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.

A. Exceptional Ability

In her analysis of criteria, the Director determined that the Petitioner meets only two of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii)(B) (at least 10 years of full-time experience in the related occupation) and 8 C.F.R. § 204.5(k)(3)(ii)(C) (a license to practice the profession). The Director then concluded that the Petitioner meets at least three of the six criteria, but he does not have a degree of expertise

[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[2] 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).

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

[4] *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).

significantly above that ordinarily encountered in the sciences, arts, or business. The record is unclear whether the Director determined that the Petitioner meets only two criteria or at least three of the six criteria.

In addition, we observe that the Director's analysis of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) (a degree, diploma, certificate, or similar awards from a learning institution relating to the area of exceptional ability) was not sufficient to apprise the Petitioner of any deficiencies the Director observed in the submitted evidence. The Director concluded that the submitted evidence does not meet this criterion but did not state a reason for this determination. The Petitioner submitted various course certificates and training records from flight schools or other learning institutions. For example, the Petitioner submitted a completion certificate of simulator initial training course from [redacted] For another example, the Petitioner submitted a course certificate of recurring training on landing for pilots of Boeing 737/200 from [redacted] and a course certificate of 757 flight crew ground training from [redacted] The courses taken by the Petitioner are related to the area of the Petitioner's claimed exceptional ability. A review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).

Moreover, if the Director determined that the Petitioner meets at least three of the six criteria, she did not provide analysis on a final merits determination to explain why the evidence in its totality did not show that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. In support of his petition, the Petitioner submitted his resume, course certificates, training records, letters from other pilots and colleagues in the field, copies of his airline transport pilot licenses, and letters from his former employers. Because the Director did not discuss any of this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated his eligibility for the requested classification.

The Director must consider the quality of the evidence, evaluate the evidence together when considering the petition in its entirety for the final merits determination, and determine whether or not the Petitioner by a preponderance of the evidence has demonstrated that he has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.[5] If the Director determines that the Petitioner has failed to demonstrate this requirement, she should not merely make general assertions regarding this failure but must articulate the specific reasons as to why the Director concludes that the Petitioner by a preponderance of the evidence has not demonstrated his qualification for exceptional ability classification.[6] The Petitioner must demonstrate that he is above other pilots in the aeronautic and aviation industries; qualifications possessed by most pilots in the aeronautic and aviation industries cannot demonstrate a degree of expertise significantly above that ordinarily encountered.[7]

On appeal, the Petitioner contends that the Director ignored or minimized substantial evidence in support of his petition and failed to reach a proper conclusion regarding his qualifications and merits in his

[5] *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[6] *See generally id.*
[7] *See generally id.*

profession. The Petitioner does not submit new evidence to establish his eligibility for the EB-2 visa classification or a national interest waiver but submits duplicate copies of the previously submitted documents.

Here, the decision is lacking a detailed discussion of the evidence provided in support of the petition. An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). In this case, for all the reasons discussed above, the Director did not adequately explain the reasons for denial of the petition.

Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. The new decision should include an analysis of the totality of the record, including the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

B. Advance Degree Professional

On appeal, the Petitioner contends that he filed the instant visa petition seeking the availability of an immigrant visa as a member of profession holding advanced degrees or its equivalent who will substantially benefit prospectively the national economy interests or welfare of the United States and whose services in his profession are sought by a U.S. employer or businesses in the United States.

While the Petitioner now claims that he is seeking qualification for the underlying EB-2 visa classification as an advanced degree professional, the record does not reflect that the Petitioner possesses a U.S. baccalaureate degree or a foreign equivalent degree. The Petitioner submitted evidence of extensive flight training and certificates, but this evidence does not constitute a U.S. baccalaureate degree or a foreign equivalent degree; or a U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a U.S. baccalaureate, not a combination of degrees, diplomas, or employment experience. 8 C.F.R. § 204.5(k)(2) permits a combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree. The Petitioner submitted evidence that he holds an airline transport pilot license and has more than five years of progressive experience in his field. However, there is no comparable provision to substitute a combination of work experience and certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. Further, a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm'r 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a U.S. baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

As the Petitioner has not established that he holds a U.S. baccalaureate degree or a foreign equivalent degree (the equivalent of a baccalaureate degree from an accredited college or university in the United

States), he is not eligible for the EB-2 visa classification as a member of the professions holding an advanced degree.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.