U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24509800

Date: JAN. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a wrestling coach, 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 that that 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.

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.

The Director found that the Petitioner met three of the six categories of evidence.[1] However, in conducting a final merits determination, the Director concluded that the Petitioner did not possess a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. On appeal, the Petitioner claims that "USCIS correctly determined that [he] has met at least three of the six requisite criteria, and therefore clearly qualifies as an alien of exceptional ability." Moreover, the Petitioner asserts "that Kazarian is not applicable in this case, and therefore USCIS erred in its conclusion that the totality of the evidence must establish that [the Petitioner] has a degree of expertise significantly above that ordinarily encountered in the science, arts, or business, because there is no such requirement in 8 CFR 204.6(k)(2)."

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. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily

[1] Specifically, the Director indicated that the Petitioner met the following criteria: official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), license at 8 C.F.R. § 204.5(k)(3)(ii)(C), and membership at 8 C.F.R. § 204.5(k)(3)(ii)(E).

encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). 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). 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 petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* Here, the record shows that the Director properly followed USCIS policy in conducting a final merits determination and ultimately concluded that the Petitioner did not qualify as an individual of exceptional ability as defined under 8 C.F.R. § 204.5(k)(2).[2]

Furthermore, because the Petitioner does not contest the Director's specific findings in the final merits determination on appeal, we deem them to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Moreover, since the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Petitioner's eligibility for a national interest waiver. *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).

ORDER: The appeal is dismissed.

[2] Although the Petitioner references "8 CFR 204.6(k)(2)," that regulatory section does not exist in 8 C.F.R. In fact, 8 C.F.R. § 204.6 relates to "Petitioners for employment creation aliens," a separate and distinct visa classification.