U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26578521

Date: JULY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic, 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.[1] *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 Petitioner did not establish that he qualifies as an individual of exceptional ability. The Director determined that although the Petitioner met at least three out of six criteria and acquired certifications and licenses that qualified him to work on multiple aircraft models and provided him with years of experience in his field, the record lacked evidence that the Petitioner's professional achievements set him apart from other aircraft mechanics to show a degree of expertise significantly above that ordinarily encountered in his field as required to establish exceptional ability. The Director went on to discuss the Petitioner's eligibility for a national interest waiver, applying the three-prong framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). Namely, the Director concluded that although the Petitioner established that his endeavor has substantial merit and that he is well positioned to advance his endeavor under the first and second prongs of the *Dhanasar* framework, respectively, the Petitioner had not established that his endeavor has national importance, or that a waiver of the required job offer, and thus of the labor certification, would not 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, which in this case, is claimed as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Exceptional

[1] Although the Petitioner's initial support letter states that he is "a professional who has attained the equivalent of an Advanced Degree," the Petitioner did not further pursue this claim and focused entirely on the exceptional ability criteria as the basis of his EB-2 eligibility claim.

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). 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 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.*

On appeal, the Petitioner asserts that by satisfying four of the six criteria that are required to demonstrate exceptional ability, he met the preponderance of the evidence standard and therefore "the reminiscence of a reasonable doubt as to whether a petitioner meets the criterium must lead to considering [the Petitioner]'s exceptional ability." In essence, it appears that the Petitioner focuses entirely on his ability to meet at least three of six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) as the basis for claiming that he is an individual of exceptional ability. We disagree. As noted above, and as previously stated both in the Director's request for evidence and in the denial, meeting the minimum requirements by providing at least three types of initial evidence is not sufficient to establish that the Petitioner is an individual of exceptional ability, but instead is only the first step. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. Here, the second step of the process is based on a comprehensive qualitative analysis of the evidence. The Director concluded in a final merits determination that the Petitioner did not establish by a preponderance of the evidence that he has achieved a degree of expertise that is significantly above that ordinarily encountered in the sciences, arts, or business. *See id.* On appeal, the Petitioner does not address the Director's final merits determination analysis and instead continues to focus exclusively on the minimum evidentiary requirements.

Accordingly, we adopt and affirm the Director's decision regarding his discussion of exceptional ability[2] and the final merits. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also*

[2] While not material to our decision or to the outcome in this matter, we note that the record contains evidentiary deficiencies. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires the submission of evidence establishing at least ten years of full-time employment in the occupation. The record contains inconsistencies regarding the dates of the Petitioner's employment with [redacted] The Petitioner provided a job termination letter stating that he was employed at [redacted] from October 18, 2010, until May 31, 2017. However, a June 2017 letter from [redacted] states the Petitioner was still employed at that entity. And in a Form I-485, Application to Register Permanent Residence or Adjust Status, filed in October 2021, the Petitioner stated that his employment at [redacted] commenced in October 2007, thus conflicting with [redacted] employment and job termination letters. We are, therefore, unable to determine the precise period of the Petitioner's employment with that organization. Moreover, the same Form I-485 states that from May 1, 2009, until October 1, 2010, the Petitioner was employed by [redacted] thus indicating an overlapping period of employment at the latter entity and [redacted] Given this apparent overlap, it is unclear whether the Petitioner worked for either employer in a full-time capacity, as required by 8 C.F.R. § 204.5(k)(3)(ii)(B). Regardless, because the Petitioner demonstrated that he met at least three of the four criteria listed at 8 C.F.R. § 204.5(k)(3)(ii), the Director correctly went on to conduct a final merits determination, which ultimately served as the basis for concluding that the Petitioner did not establish that he is an individual of exceptional ability.

Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Lastly, although the Director determined that the Petitioner established that he is well positioned to advance his endeavor, because 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).

ORDER: The appeal is dismissed.