U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23671624

Date: MAY 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, 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 the Petitioner did not establish eligibility for the EB-2 classification or for a national interest waiver under the Dhanasar framework. 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.

On appeal, the Petitioner asserts the Director overlooked pieces of evidence and applied a higher standard of proof. In support, he relies upon evidence and arguments previously submitted.[1] The Petitioner does not dispute the Director's determination that he has not established eligibility for the EB-2 classification as an advanced degree professional.

The Director also determined the Petitioner did not qualify as an individual of exceptional ability. Specifically, the Director concluded the evidence did not establish the Petitioner met at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). We adopt and affirm the Director's decision regarding the specific issue of eligibility for the EB-2 classification. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also 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).

[1] Although the Petitioner mentions USCIS "lost" his response to the request for evidence (RFE), the Director's decision referenced the receipt of both the Petitioner's RFE response and the evidence contained therein.

The evidence demonstrates the Petitioner received training to pilot certain types of aircrafts and to perform particular flight skills; however, the certificates, checklists, and training records do not appear to be "academic records" within the meaning of 8 C.F.R. § 204.5(k)(3)(ii)(A). Further, the evidence suggests the issuing authorities of these documents exist to train or certify an individual on a discrete skill or the use of a particular aircraft. The evidence does not show how the authorities relate to each other such that they collectively constitute a college, university, school, or other institutions of learning. Finally, the Petitioner did not list the issuing authorities or his certificates in the education portion (section 11) of his ETA 750 Part B form, which further reinforces a conclusion that the documentation is not an official academic record from a college, university, school, or other institution of learning.

In his RFE response, the Petitioner provided new letters from former employers to demonstrate he possessed at least ten years of full-time experience in the occupation as of the filing date of the petition. However, we question the credibility of the letters. One letter states the Petitioner worked for [redacted] until June 2006, while the Petitioner's résumé states he worked for this same employer until March 2006. Each letter contains a similar structure, wording, and format, which suggests the signatories of the letters did not independently write them. Additionally, the [redacted] letter postdates the RFE issuance and is therefore less probative.[2] Accordingly, we conclude the evidence is insufficient to establish eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director considered the Petitioner's evidence of membership in the Aircraft Owners and Pilots Association (AOPA) and explained why it did not establish the Petitioner's eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(E). The Petitioner provided evidence that the AOPA is an organization addressing issues such as pilot error, aircraft accidents, equipment malfunctions, and Federal Aviation Administration compliance. A membership with the AOPA provides "coverage options" and various "plans" similar to that of insurance, which does not suggest that it is a professional association within the meaning of the criterion. Furthermore, as the AOPA is open to owners of aircrafts, a category unrelated to any profession, the evidence does not support a finding that AOPA is a professional association.

On appeal, the Petitioner reemphasizes his career successes, skills, and professional relationships, and relies upon previously provided evidence, such as support letters and certificates, to establish his eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F). The evidence suggests his colleagues respect and appreciate him and that he performed well as a pilot; however, it does not indicate the Petitioner has been recognized for achievements and significant contributions to the aviation industry as a whole.

The evidence does not establish the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, the Petitioner has not established eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. A final merits determination is not required. As the Petitioner has not established the threshold requirement of

[2] Evidence the Petitioner creates after USCIS points out the deficiencies in the petition is not necessarily independent and objective evidence. Independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the Director's RFE. *See Matter of O-M-O-*, 28 I&N Dec. 191, 197 n.5 (BIA 2021) (quoting Matter of Pineda, 20 I&N Dec. 70, 73 (BIA 1989) for the prospect that the most persuasive evidence presented was "documentary evidence which was contemporaneous with the events in question").

eligibility for the EB-2 classification, analyzing his eligibility for a national interest waiver under the Dhanasar framework is unnecessary.[3] Nevertheless, we reviewed the evidence in its totality and agree with the Director's conclusion that the record does not establish the Petitioner's eligibility for a national interest waiver.

The Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

[3] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments concerning eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (stating that "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).