U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 26925895

Date: MAY 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an individual of exceptional ability in the sciences, arts or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record does not establish the Petitioner qualifies for classification as an individual of exceptional ability. The Director further concluded that the Petitioner had not established 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.

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.

## 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.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) An official academic record showing that the [noncitizen] 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;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the [noncitizen] has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

Although the Petitioner asserted that he satisfies five of the six exceptional ability criteria, specifically 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C), (E)-(F), the Director found that the Petitioner satisfied only the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Accordingly, the Director concluded that the record does not establish the Petitioner qualifies for classification as an individual of exceptional ability. The Director further concluded that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner reasserts that, in addition to satisfying the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), he satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B)-(C), (E)-(F). The Petitioner does not assert on appeal that the standards at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply in this case and that comparable evidence, as contemplated at 8 C.F.R. § 204.5(k)(3)(iii), should be considered. For the reasons discussed below, the record does not satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii).

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought." On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner described the occupation that he, as a self-petitioner, seeks for himself as "chief executive officer." Therefore, the dispositive issue for determining whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) is whether, at the time of filing the petition, the Petitioner had at least 10 years of full-time experience in the occupation of a chief executive officer, or comparable positions.

The Director acknowledged that the record contains various letters from prior employers; however, the Director observed that the letters do not indicate whether the Petitioner worked in a full-time capacity in the respective positions, and most letters do not describe the duties the Petitioner performed for the various positions he held. The Director further concluded that, although the Petitioner "may have experience in the field of music in different positions, the evidence provided does not meet the plain language of the standards to establish [his] required experience of ten (10) years as a CEO/Entrepreneur. Thus, the evidence provided does not establish the [P]etitioner meets this criterion."

On appeal, the Petitioner reiterates his prior work experience and he acknowledges that his "previous job titles were not 'CEO' or 'Entrepreneur.'" However, the Petitioner asserts that "the positions he held throughout his career are directly related to his current occupation." The Petitioner further asserts that "his 3 years as a 'business manager' and 4 years as a 'commercial advisor' should be factored in as experience in the specialty, along with the 7 years as CEO and Entrepreneur, when he started his business in 2015."

The record does not contain letters from the Petitioner's current or former employers that establish he has at least 10 years of full-time experience in the occupation for which he is being sought, as required by 8 C.F.R. § 204.5(k)(3)(ii)(B). First, the record contains a one-page letter, dated November 2019, from an individual who identifies himself as "the CPA for [the Petitioner] since 28/04/2015." The letter summarizes the Petitioner's employment history beginning in 2003; however, the letter does not purport to be from the Petitioner's current or former employer; therefore, it does not satisfy the plain

language of 8 C.F.R. § 204.5(k)(3)(ii)(B). Moreover, even if the CPA letter otherwise established that it is from the Petitioner's current or former employer, the extent of the information it conveys that the signatory would have personal knowledge of, as of April 2015 when he became the Petitioner's CPA, would be the Petitioner's work as "CEO at the [redacted] Brazil, from May 2015 through the letter's submission in November 2019. However, other than referring to the Petitioner's job title as "CEO," it does not elaborate on whether the Petitioner worked in a full-time capacity and what his duties were, beyond the similarity in its occupation title to that sought by the Petitioner. Therefore, even if the CPA letter were from the Petitioner's current or former employer—which it is not—it would not establish that his work between 2015 and 2019 as "CEO" would qualify as "full-time experience in the occupation for which he . . . is being sought," as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

Next, the letter contains letters in a language other than English, and accompanying English translations, that assert that the Petitioner "was an employee of the company . . . from 11/05/2008 to 10/16/2012" and "belonged to the staff of this company . . . admitted on 11/01/2005 and dismissed on 06/10/2008," respectively. However, neither letter indicates whether the Petitioner's experience was in a full-time capacity, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Moreover, as the Director discussed, the letter from the Petitioner's employer from 2008 to 2012 does not describe the duties he performed while "occupying the position of business advisor." Therefore, even if the letter from the Petitioner's employer from 2008 to 2012 otherwise satisfied the plain language of the applicable criterion, it does not establish whether his position of "business advisor" was "in the occupation for which he . . . is being sought," as required by 8 C.F.R. § 204.5(k)(3)(ii)(B), beyond merely providing his job title.

Although the Petitioner asserts on appeal that his other qualifying employment was when "[h]e became a Commercial Manager at [redacted] from 2005 to 2008," the letter from an unnamed signatory for the successor-in-interest of [redacted], directly contradicts the Petitioner's statement. The letter indicates that the Petitioner held the position of "bank clerk" between November 2005 and February 2005, when the Petitioner's title became "bank cashier clerk," which he held until "06/02/2007." The letter indicates that, beginning in 2007, until the Petitioner's employment at [redacted] ended in 2008, he held "assistant manager" positions, not that he held management positions from 2005 to 2008, as he asserted. The direct conflict between the Petitioner's stated employment history and the information provided in the letter from his former employer casts doubt on the veracity of his stated employment history specifically, and of the record in general. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (providing that doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition). Moreover, even to the extent that the letter bears probative value regarding the Petitioner's assertions, it describes his duties as an "assistant manager" in 2007 and 2008 specifically as "less complex activities involving customer service and product sales," which do not appear to be akin to the duties of a chief executive officer, the occupation for which he is being sought. Moreover, similar to the other letters, even if the [redacted] letter otherwise satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), it does not establish that the Petitioner had full-time experience in the respective positions. In summation, the record does not establish that the Petitioner has at least 10 years of full-time experience in the occupation for which he is being sought; therefore, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

Next, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires "[a] license to practice the profession or certification for a particular profession or occupation." The Director acknowledged that the record contains a copy of the Petitioner's "Individual Registry and Good Standing Certificate," issued by a regional council in Brazil. However, the Director concluded that the certificate "does not establish that the occupation requires the license or certification possessed by the [P]etitioner" and, thus, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

On appeal, the Petitioner asserts, "[a]n occupational license is not required in order to practice this proposed endeavor, as there is no governmental licensing agency in charge of entrepreneurs, as these professionals don't need legal authority to work in their occupation." Nevertheless, the Petitioner asserts that the aforementioned certificate "gives him and his current and futures companies [sic] access and permissions that other professionals wouldn't have" and that it satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) contemplates: first, that a license or certification is required to practice a particular profession or occupation; and second, that the individual in question possesses such a valid license or certification. The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) does not contemplate licenses or certifications that an individual may possess that are not required to practice a particular profession or occupation. Because the Petitioner states on appeal that a license is not required in order to practice the proposed endeavor, and because the record supports such a statement, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The Director acknowledged that the record contains various letters of support; however, the Director found that "[t]he letters do not provide specific examples of the [P]etitioner's contributions to the industry or field." On appeal, the Petitioner asserts that his "work was officially recognized by his then employer, [redacted], and by the field, as he received the [redacted] President's Council Award 2010,' a Global [redacted] award that singled him as an extraordinary employee in an event held in [redacted]." The Petitioner further asserts that he received the same award in 2011. The Petitioner also states that the entity that awarded the Petitioner was acquired by another entity in 2020 and "[a]s such, information on the award is no longer available, thus we are unable to detail this ceremony or the award itself."

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Because the Petitioner provides no further details regarding the awards he received in 2010 and 2011, the record does not establish that such awards—which appear to be an internal award given by an employer to its own employees—are "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations," as contemplated by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner also asserts on appeal that his "vinyl records inventory is of significant contribution to cultural and artistic fields." The Petitioner asserts that he has been "noticed by the media," and he references published interviews of him regarding his vinyl record collection. However, the plain language of the criterion of 8 C.F.R. § 204.5(k)(3)(ii)(F) contemplates recognition "by peers,

governmental entities, or professional or business organizations." The record does not clarify how the referenced media interviews are recognition by peers (i.e. other chief executive officers), governmental entities, or professional or business organizations, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner further asserts on appeal:

> [redacted] a civil servant at the Cultural Secretary in the State of [redacted] writes on the Petitioner's unique abilities in running such an extraordinary business and [redacted] Culture Secretary in the State of [redacted] says that he "plays an essential role." [redacted] a councilwoman from [redacted] praises [the Petitioner's] cultural contributions; [redacted] employee at a cultural foundation, defines the Petitioner as a "specialist in the cultural field" and [redacted] label director, praises [the Petitioner's] work and dedication to the phonographic industry and the cultural fields.

As the Director addressed, the letters referenced on appeal indicate that the Petitioner provided services and located vinyl records for his customers; however, they do not establish that he received recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). We further note that, although some of the letters are from individuals who are employed by governmental entities, the letters themselves do not purport to be recognition for achievements and significant contributions to the industry by the signatories' employing governmental entities. In summation, the record does not establish that the Petitioner has received "recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations"; therefore, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Because the record does not otherwise satisfy at least two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not determine whether it satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), in order to satisfy at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). *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).

In summation, the Petitioner has not established the record satisfies at least three of the exceptional ability criteria; therefore, we need not determine whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2); *Kazarian*, 596 F.3d 1115. Furthermore, because the record does not establish that the Petitioner satisfies at least three of the exceptional ability criteria, it does not establish that he qualifies for second-preference classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act. We reserve our opinion regarding whether the Petitioner satisfies any of the criteria set forth

in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

## III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

**ORDER:** The appeal is dismissed.