U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27007862

Date: SEP. 07, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur and manager in the field of construction, seeks employment-based second preference (EB-2) immigrant classification both as an advanced degree professional and as an individual of exceptional ability. *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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualified for the underlying EB-2 classification. The Director did not analyze the evidence related to the Petitioner's request for a national interest waiver because such analysis was not necessary to the finding of ineligibility. 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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability 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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, 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.

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, 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.[3]

II. ANALYSIS

The Petitioner intends to develop and manage a trucking company, initially claiming qualification under the EB-2 classification both as an advanced degree professional and as an individual of exceptional ability.

As stated above, establishing that a petitioner is an individual of exceptional ability requires satisfaction of at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner initially claimed that he qualified under the following categories of evidence:

- (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.

- (E) Evidence of membership in professional associations.

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

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[1] 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).

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

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In response to a request for evidence, the Petitioner claimed to qualify for the EB-2 classification as an individual holding the equivalent of an advanced degree. The Director reviewed the Petitioner's certificate in computer studies from a vocational institution in Russia and an academic evaluation that equated his three-year program and work experience to "a bachelor of science with dual majors in computer information systems and business administration." The Director determined that the Petitioner did not show he had obtained the foreign equivalent of a U.S. baccalaureate degree followed by five years of progressive, post-baccalaureate experience. The Director also reviewed the degree in terms of its relevance as evidence of the Petitioner's exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(A) and determined that the evidence did not show how the Petitioner's degree related to his claimed area of exceptional ability. Although the Director determined that the Petitioner met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) by demonstrating his membership in the Owner-Operator Independent Drivers Association (OOIDA), the Director further determined that the Petitioner did not meet any of the remaining criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner did not meet at least three of the six criteria to establish his eligibility for the EB-2 classification, the Director denied the petition, concluding that the Petitioner did not establish eligibility for the benefit sought.

On appeal, the Petitioner asserts that the Director's decision "contains numerous erroneous conclusions of both law and fact." The Petitioner, however, does not specify how the Director erred or what factors in the decision were erroneous.[4] The Petitioner provides a brief in which he claims his qualifications as an individual of exceptional ability based on the evidence of record and additional documentation submitted with the appeal. We note that, on appeal, the Petitioner does not assign specific error to the Director's determination that he does not qualify as an advanced degree professional. We therefore consider the issue of whether the Petitioner qualifies as an advanced degree professional to be abandoned.[5]

The Petitioner asserts that he qualifies as an individual of exceptional ability under the criteria listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(E). Upon review of the record and for the reasons discussed below, we agree with the Director's determination that the Petitioner does not qualify as an individual of exceptional ability.

> *An official academic record showing that the alien 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. 8 C.F.R. § 204.5(k)(3)(ii)(A).*

The Petitioner did not submit new evidence relating to this criterion on appeal. The record includes a certificate and transcript from the [redacted] Public Educational Institution of Vocational Education College of Technology showing that the Petitioner attended from September 2006 to June 2009. The translation of the certificate shows that the Petitioner "was conferred the qualification of a 2nd category electronic computer and computer." The Petitioner claims exceptional ability in business—he plans to develop and manage a trucking company. The Petitioner's transcript does not show that he completed any courses related to this area of exceptional ability; the transcript shows routine coursework generally required for completion of academic programs and courses for computer

[4] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

[5] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n. 2 (BIA 2012) (finding that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived).

studies.[6] The Petitioner has not clarified on appeal how his certificate for completion of a computer studies program relates to his claimed area of exceptional ability. Thus, the Petitioner has not established by a preponderance of the evidence that he has received a degree, diploma, certificate, or other similar award from an institution of learning relating to his area of exceptional ability.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).*

On appeal, the Petitioner submits a recommendation letter from the general director at the company at which he was formerly employed. The letter, dated January 1, 2023, is identical to a letter dated August 4, 2022, which was already present in the record. The letter states the Petitioner was employed from July 2, 2011, to August 31, 2021, in the positions of procurement manager and project manager. The Director noted that the letter does not specify whether this employment was full-time or part-time. Even if it were to state that the Petitioner was employed full-time for the period listed, which it does not, the credibility of the letter is in question, as the employment period contradicts the dates listed in a document in the record titled "Employment Book." The information in this document shows that the Petitioner was first employed at the company from July 2, 2011, to November 18, 2014. It shows that the Petitioner was next hired at the company on October 2, 2017, and held various positions until he was hired part-time as a project manager on August 1, 2018. The discrepancies between the recommendation letter and the "Employment Book" are not clarified by other information in the record. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. Doubt cast on any aspect of a petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record also includes a business plan and registration documents for the Petitioner's company in the United States. However, these documents are not supported by evidence that the Petitioner has gained any full-time experience managing the company. The evidence of record does not establish that the Petitioner has at least ten years of full-time employment experience in the occupation for which he is being sought.

> *A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).*

On appeal, the Petitioner states that because the "occupation does not require a license, USCIS should consider comparable evidence, such as the [Petitioner's] past record in his field."[7] As stated above, the credibility of the Petitioner's recommendation letter is in question, and beyond the Petitioner's personal statement, there is no independent, objective evidence in the record detailing the Petitioner's employment experience. *See Matter of Ho*, 19 I&N Dec. at 591-92. The record does not include an

[6] An evaluation from a professor at [redacted] University refers to the Petitioner's certificate as a "Diploma in Electronics and Computers" and equates his three-year educational program and work experience to a "Bachelor of Science with Dual Majors in Computer Information Systems and Business Administration." However, his transcript does not show that he completed any courses in business administration. USCIS may reject or give lesser evidentiary weight to credential evaluations inconsistent with the record or "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

[7] *See* 8 C.F.R. § 204.5(k)(3)(iii) (stating that if the criteria do not readily apply to the occupation, the petitioner may submit comparable evidence to establish eligibility).

explanation or probative evidence to show why the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) does not readily apply to his occupation. The fact that the Petitioner has not obtained licensure or certification is not evidence that the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) does not apply to his occupation. Finally, it does not appear that the documentation submitted to demonstrate the Petitioner's past record reflects the same caliber of expertise as—or is truly comparable to—receiving a license or a certification necessary for the practice of a specific profession or occupation. Thus, the Petitioner's suggested comparable evidence is insufficient to demonstrate that he has a license to practice the profession or certification for a particular profession or occupation. He has not established his eligibility under this criterion.

Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

On appeal, the Petitioner asserts that he qualifies under this criterion, stating, "Based on the documentation in the record, the [Petitioner] clearly established that this criterion has been met, and USCIS erred in finding otherwise." The Petitioner provides tax documents showing his monthly income in 2020 and "salary reviews" for positions in [redacted] Russia, from Zarplan.com. These webpages provide a "[s]alary overview as of 11/19/2022," showing median and average salaries for project managers in various fields, as well as job listings. It is not clear what sources were used for the data provided. It is also unclear whether these salaries are yearly or monthly; the salaries listed all appear comparable to the monthly earnings depicted on the Petitioner's tax documents. As previously stated, based on the evidence of record, we are unable to evaluate the Petitioner's employment history because the documentation submitted is not credible; as such we are unable to determine whether the position he held and for which he has submitted tax documentation is comparable to the positions described in the salary overview from Zarplan.com, the objective credibility of which is also indeterminate in nature. We are unable to determine whether the Petitioner's earnings are comparably higher than the earnings of others in his field. Information concerning salaries for positions similar to that of the Petitioner, as well as valid documentation of the Petitioner's salary and specific occupation, are necessary in making a determination of whether a salary demonstrates exceptional ability. The evidence does not establish that the Petitioner has commanded a salary or other renumeration for services that demonstrates exceptional ability.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Director determined that the Petitioner met this criterion.

In sum, the Petitioner has not established eligibility for the EB-2 classification as an advanced degree professional. Further, he has not established eligibility for the EB-2 classification as an individual of exceptional ability because he has not satisfied at least three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner has not met at least three of the six criteria, we will not conduct a final merits determination to determine whether the Petitioner is recognized as an individual of exceptional ability.

The record does not establish that the Petitioner meets the requirements for EB-2 classification. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and reserve arguments concerning the Petitioner's eligibility for a national interest waiver under the

Dhanasar framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The Petitioner has not established is eligibility for the EB-2 classification as either an advanced degree professional or as an individual of exceptional ability. The petition will remain denied.

ORDER: The appeal is dismissed.