U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28110130

Date: SEP. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). He 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. § 1 153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition in May 2022, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director further determined that the Petitioner did not merit a national interest waiver as a matter of discretion.

Later, the Petitioner filed combined motions to reconsider and reopen, which the Director dismissed in January 2023. The Director dismissed the motion to reconsider determining that the Petitioner had not demonstrated that the denial was 1) based on an incorrect application of law or policy, and 2) incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The Director also reviewed the new evidence submitted in support of the motion to reopen and ultimately concluded that it was insufficient to overcome his previous determination that the Petitioner was ineligible for both the EB-2 classification and a national interest waiver. 8 C.F.R. § 103.5(a)(2).

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 in the sciences, arts, or business is defined in 8 C.F.R. § 204.5(k)(2) as a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. To qualify as an individual of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, of which an individual must meet at least three. If a petitioner satisfies these initial requirements, we then consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Matter of Chawathe,* 25 I&N Dec. at 376 (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality"). *See also Kazarian* v. *USCIS,* 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *See* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. at 884. *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. EB-2 CLASSIFICATION

The Petitioner claimed EB-2 eligibility as both an advanced degree professional and as an individual of exceptional ability. The Director evaluated the evidence submitted in support of the petition and concluded in the denial that the Petitioner did not establish his EB-2 eligibility under either avenue. Later, on motion he reaffirmed his determinations in this regard.

A. Member of the Professions Holding an Advanced Degree

The Petitioner contends that he qualifies as a member of the professions holding an advanced degree, and provided evidence, including copies of his diploma and course transcripts, certified English translations, and a "course-by-course foreign academic evaluation" demonstrating that he holds the U.S. equivalent of a high school diploma. The Director determined in his denial and reaffirmed on motion that the Petitioner does not possess an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). We agree.

In order to show that a Petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). On appeal, the Petitioner does not assert nor the does record show that he possesses a United States advanced degree or a foreign

equivalent degree. *Id.* Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

To qualify as an advanced degree professional, a petitioner relying on foreign education must have a single, foreign degree that equates to at least a U.S. baccalaureate degree. The regulations do not allow baccalaureate equivalents based on combinations of lesser educational credentials or of education and experience. *See Employment-Based Immigrant Petitions*, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to . . . . have experience equating to an advanced degree under the second [preference category], a [noncitizen] must have *at least* a bachelor's degree") (emphasis added).

On appeal, the Petitioner submits an evaluation of his work experience from [redacted] [G-] in which G- concludes that his work experience is "equivalent to the U.S. degree of Bachelor of Science in Aeronautical Science awarded by a regionally accredited university in the United States." G-'s conclusion is based on a review of the Petitioner's "work history, affidavit, and letters issued by employers detailing his professional employment and job responsibilities."

In cases involving foreign degrees, USCIS may favorably consider a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-documented case for an equivalency determination that is based solely on the individual's foreign degree(s). Opinions rendered that are merely conclusory and do not provide a credible roadmap that clearly lays out the basis for the opinions are not persuasive. *See* 9 *USCIS Policy Manual* F.5, https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-9. G-'s evaluation does not focus solely on the Petitioner's academic credentials and does not suggest that he possesses at least a single, foreign degree that equates to at least a U.S. baccalaureate degree, as required.

It is important to understand that any educational equivalency evaluation performed by a credentials evaluator or school official is solely advisory in nature and that the final determination continues to rest with [USCIS]. *Id.* (*See also Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).) We conclude that this credential evaluation is of little probative value to the issue at hand. *Matter of Chawathe*, 25 I&N Dec. at 376. Accordingly, the Petitioner has not established his eligibility for the requested EB-2 classification as an advanced degree professional.

B. Exceptional Ability

The Director concluded in the denial, then reaffirmed on motion, that the Petitioner did not satisfy the plain language requirements of at least three criteria. Specifically, the Director determined that the Petitioner fulfilled only the *experience* criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and the *license* criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). However, for the following reasons, we withdraw the

Director's conclusion that the Petitioner did not meet the *degree* criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

> *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).

In dismissing the Petitioner's motion to reopen, the Director explained that the evidence regarding his academic achievements provided in support of this criterion was insufficient as his high school diploma does not meet the plain language requirements under this criterion; noting for instance, that the Petitioner did not show that his high school-level program of study was related to aviation, his claimed area of exceptional ability. On appeal, the Petitioner does not address the Director's specific concerns about this evidence. We agree with the Director that the Petitioner's foreign education that has been determined to be equivalent to a U.S. high school diploma does not meet the plain language requirements for this criterion.

Turning to the G-'s evaluation of the Petitioner's work experience, we incorporate our previous discussion of this newly provided evidence on appeal, noting that G-'s evaluation does not analyze the Petitioner's academic achievements, but instead focuses on his work experience. The Petitioner does not adequately explain on appeal how his years of work experience, which qualify him for the *experience* criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), also meet the plain language requirements under this criterion.

The Director concluded that the Petitioner had not substantiated his assertion that his airline pilot training certificates are "the academic equivalent to a PhD/Doctorate," as he had not provided authoritative evidence to show that they are equivalent to any type of degree. *Chawathe*, *supra.* While we agree with the Director's conclusion in this regard, we note that a petitioner need not show that he possesses a degree or a diploma from a college or university in order to meet the plain language of this criterion.

The record shows the Petitioner plans to offer commercial airline pilot services to U.S. employers and has provided evidence, including his airline pilot training certificates, resume, flight logs, and pilot licenses, as well as letters from colleagues and former employers to establish that he attended various airline pilot training programs offered at flight schools in order to work as a commercial airline pilot. We conclude that the Petitioner has submitted documentation sufficient to meet the plain language of this criterion.

As the Petitioner has satisfied the initial regulatory requirements at 8 C.F.R. § 204.5(k)(3)(ii), we will consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered in a final merits determination as discussed above.[1] 8 C.F.R. § 204.5(k)(2).

We first observe that the Petitioner's training credentials, experience, and licensure as an airline pilot does not automatically render him an individual of exceptional ability because these types of

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

qualifications are part of the normal course of employment and professional development in the field of aviation. We acknowledge that the Petitioner submitted letters from colleagues and former employers who verified his employment history and indicate that he is an experienced airline pilot who has performed well in positions of responsibility within the field of aviation.

On appeal, the Petitioner "reinstate[s] arguments" and generally references evidence previously considered by the Director and asserts that this material is sufficient to "secure an approval for the benefit sought." But he does not further address how he qualifies as an individual of exceptional ability. The Petitioner provided a "professional plan" in response to the Director's request for evidence (RFE) in which he outlines the work that he performed as an airline pilot, noting for instance that at the age of 26 he became a first officer on a Boeing 747-400, and eventually became "the [c]aptain of a wide-body jet at the age of 33 for a major international airline based in [redacted]." He references his employment verification letters and emphasizes that the authors describe him as being "committed to [working as] a pilot," and as an individual has performed his airline piloting duties with "professionalism." The Petitioner has also provided evidence, such as media articles covering various aspects of the aviation industry in which the challenges and complexities involved in operating jet airplanes are described. He states in his professional plan:

> My role as a Captain involves leading a team of crew members in safety-critical tasks under strict time constraints. I must operate under the strictest regulations and policies concerning safety and efficiency, which also encompass legal, technical, and environmental factors. My performance and use of resources is closely monitored – especially fuel – as it accounts for 40% of the total cost of the business. I am also in charge of time management, ensuring that operations are conducted in compliance with a tight schedule, while protecting safety and security at all times, and satisfying company-required costs as much as possible.

The airline pilot tasks and responsibilities described by the Petitioner in his professional plan appear to be in keeping with those typically performed by those employed in the "Commercial Pilots" occupation. *See* the Department of Labor's Occupational Information Network (O*NET) summary report for "Commercial Pilots" which may be viewed at https://www.onetonline.org/link/summary/53-2012.00. But without more, the Petitioner has not shown how the successful performance of his duties and responsibilities as a commercial airline pilot establish that he has been recognized for his achievements and contributions in the aviation field, or that he otherwise possesses expertise significantly above that normally encountered therein.

The Petitioner submitted an opinion letter from [redacted] [A-] in his RFE response. A- opined that the "[Petitioner's] credentials in the area of piloting undoubtedly demonstrate that he is a person of exceptional ability." In her analysis, she discusses the Petitioner's work experience, certifications and licensure, noting "he has served on both domestic and international flights and accrued almost 15,000 flight hours" and asserts that his employment "[as] pilot in command of the Boeing 777 is a significant achievement, as this is one of the largest and most advanced aircraft."

A- also highlights the Petitioner's many years of work experience as an airline pilot, and states "the evidence proves that [the Petitioner] has the ability to maintain safety and make good decisions – a skill which his peers have commended him on." She incorporates excerpts of the Petitioner's

professional plan as a means to outline his training, skills and experience, and also quotes from the reference and employment letters which we have already discussed noting, among other things, that the Petitioner is "committed to his professionalism as an aviator," is "an honest hard-working man," and that while working as a pilot "he [took] no sick leave for the year ending in June 2021. . . "

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* Here, A- does not substantively document or analyze the specific ways in which the Petitioner has made significant contributions to his field, or adequately explain how his "recognition" by his former employers and work colleagues is indicative of his asserted exceptional ability as an airline pilot. Therefore, we conclude that her evaluation of the Petitioner's credentials does not persuasively demonstrate that the Petitioner is an individual of exceptional ability as contemplated by section 203(b)(2)(B)(i) of the Act and 8 C.F.R. § 204.5(k)(2).

Collectively considering the evidence of record, we conclude the Petitioner has not adequately demonstrated the nature of his specific contributions to the field of aviation, supported by documentary evidence. For instance, he has not explained how his pilot training and his license, both required for entry into the profession, demonstrate his exceptional ability. Though he has provided reference letters, they were not accompanied by corroborative evidence showing the impact of the Petitioner's work in the field, such as examples of the implementation of his piloting or training strategies, methodologies or innovations, or how the Petitioner's work has otherwise been recognized outside of organizations where he has been employed. *Chaw*athe, *supra*. For the foregoing reasons, we determine that the Petitioner has not established that he possesses a degree of expertise significantly above that ordinarily encountered in the field of aviation as an individual of exceptional ability.

The Petitioner has not established eligibility as an individual of exceptional ability or as an advance degree professional under section 203(b)(2)(A) of the Act. Therefore, he is ineligible for the EB-2 classification.

II. NATIONAL INTEREST WAIVER

The Director considered the Petitioner's claims under the three prongs of *Dhanasar* and determined in dismissing the Petitioner's motion to reopen that he only established the substantial merit of his proposed endeavor. Regarding national importance, the Director reviewed and analyzed the Petitioner's claims including his professional plan, A-'s advisory opinion letter, and industry reports and articles and discussed their deficiencies. On appeal, the Petitioner submits a brief which generally references arguments which were considered by the Director in denying the petition and dismissing the motions and contends that the evidence of record is sufficient to establish his eligibility for the immigration benefits sought in the petition. He does not, however, provide any new evidence or arguments which overcome the Director's determinations.

Therefore, we adopt and affirm the Director's decision as it relates to this prong. *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 this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for a national interest waiver, as a matter of discretion.[2] Since 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 the two remaining *Dhanasar* prongs. *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).

III. CONCLUSION

The burden of proof in these proceedings rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[2] *See Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).