U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27674457

Date: SEPT. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial analyst, seeks classification as a member of the professions holding an advanced degree or of exceptional ability, 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 employment based second preference (EB-2) 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. *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).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for classification as an individual of exceptional ability and a discretionary waiver of the job offer requirement, and thus a labor certification, was not required upon application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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 petition 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, but only if a petitioner categorically establishes eligibility in the EB-2 classification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed 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;
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> (B) 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;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

But meeting at least three criteria does not, in and of itself, establish eligibility for this classification. 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.

If we conclude that a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

Whilst 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*, *see supra*. *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen 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.

II. ANALYSIS

The Petitioner is a financial analyst seeking to demonstrate eligibility in the EB-2 classification based on their exceptional ability. A Petitioner must demonstrate expertise significantly above that ordinarily encountered to show that they are of exceptional ability. In support, the Petitioner submitted an official academic record showing that they had earned a Titulo de Tecnólogo (Title of Technologist) diploma from the Universidade [redacted] Brazil, letters purporting to demonstrate more than 10 years of full-time work experience human resources specialist and their significant contributions to and achievements in the field, evidence purporting to be the Petitioner's licensure or certification to practice as a financial analyst, evidence of the Petitioner's salary striving to demonstrate their exceptional ability, evidence of membership in professional organizations, and documents seeking to demonstrate the Petitioner's recognition for achievements and significant contributions to their field.

We agree with the Director's ultimate decision that the Petitioner is not of exceptional ability and therefore categorically ineligible for the EB-2 classification. The Director concluded that the Petitioner met four of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Director concluded that the Petitioner demonstrated they met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (E) but did not meet 8 C.F.R. § 204.5(k)(3)(ii)(D) and (F). Upon de novo review, we conclude that the Petitioner has not demonstrated that they met any of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii) for the reasons set forth below.

> *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).

We disagree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. The Petitioner provided a copy of their Titulo de Tecnólogo (Title of Technologist) diploma from the Universidade [redacted] with translation. The diploma and translation indicated that the university awarded the Titulo de Tecnólogo (Title of Technologist) in the field of system analysis and development.

The Petitioner's endeavor proposed that they function as a financial analyst. It is not apparent from the face of the diploma and its translation how the field of system analysis and development related to the financial analysis area the Petitioner indicated is their area of exceptional ability. And the record does not contain sufficient evidence or explanation as to how the Petitioner's credential in the field of system analysis and development related to a demonstration of the Petitioner's exceptional ability in the field of financial analysis. So we cannot conclude that the Petitioner has earned a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning related to financial analysis, the area of exceptional ability corresponding to their proposed endeavor.

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

We disagree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. The Petitioner submitted an employment verification letter from [redacted] as evidence of their possession of 10 years of full-time experience as a financial analyst. As the

employment verification letter did not adequately indicate whether the Petitioner's prior employment was full-time or part-time in nature, the Director issued a request for evidence (RFE). In response to the RFE, the Petitioner submitted a statement from the Petitioner's prior employer summarizing their work schedule over the course of their employment and an excerpt of a section of the law of Brazil governing the establishing the normal working hours of employees at [redacted].[1]

The employment verification letter reflects that [redacted] employed the Petitioner between May 11, 2000 and April 16, 2019 as a new banking technician and general manager. The Petitioner asserted in the letter accompanying their petition and RFE response that they also held the positions of bank technician, bank branch treasurer, corporate agent, pledge appraiser, relationship manager, and branch general manager, and outlined their duties in those positions.

But the Petitioner's evidence did not meet the minimum requirements of the regulation to reliably document the 10 years of full-time experience as a financial analyst. The Petitioner's experience as a new banking technician appears correspondent to a general customer service position wherein they were required to "provid[e] services to the public," "verif[y] authenticity of documents, signatures and fingerprints," "perform administrative activities...," and "prepare, write and check documents and correspondence in general." These job duties do not correspond with the job duties of a financial analyst. So the Petitioner's new banking technician position cannot satisfy the regulatory requirements.

The Petitioner's experience as a general manager is not correspondent with the duties of a financial analyst either. The general manager's job duties requiring them to "plan, monitor and control the execution of the activities of the team under [their] management" and "define strategies and implement campaigns to attract, invest, collect, sell products and services...and recover credit granted" are not same or similar to the duties a financial analyst would be anticipated to perform.

We held in *Chawathe* that the standard of proof in immigration proceedings is the preponderance of the evidence, the burden of proof is always on the petitioner. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. When, as here, a petitioner has not met the burden of persuasion by a preponderance of the evidence because their evidence is not material, relevant, or probative it follows that they have failed to demonstrate eligibility for the benefit that they seek. For all the foregoing reasons, we

[1] The Petitioner also submitted employment verification letters from employers for employment commencing after the petition's filing. A petition must demonstrate eligibility for a requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). So the employment verification letters from employers for employment commencing after the filing of the petition are not material, relevant, or probative to evaluating the Petitioners categorical eligibility for EB-2 permanent immigration classification. And, like the employment verification letter the Petitioner submitted with the initial petition, the employment described in the employment verification letter from employers for employment commencing after the filing of the petition does not reflect work experience in the financial analyst occupation the Petitioner plans to occupy themselves with.

conclude that the Petitioner has not demonstrated that they have at least 10 years of full-time experience in the occupation of financial analyst. So the Petitioner did not and cannot satisfy the regulatory requirements to meet this criterion to demonstrate their exceptional ability.

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

We disagree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. In support of their licensure or certification to perform the duties of a financial analyst, the Petitioner submitted a copy with translation of a certificate reflecting the Petitioner was approved for "CPA-10" certification from ANBIMA – Brazilian Association of Financial and Capital Market Entities. But these documents are not persuasive to demonstrate a financial license or certification.

Licenses and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job.

ANBIMA – Brazilian Association of Financial and Capital Market Entities is not an official government body. It is a trade organization representing institutions in Brazil operating in the financial and capital markets. The record does not contain an indication of the mandate or authority that ANBIMA exercises over the financial analyst occupation. And the record does not establish that the "CPA-10" certification is a licensure or certification related to financial analysis occupations. Publicly available information on the ANBIMA – Brazilian Association of Financial and Capital Market Entities indicates that the "CPA-10" is for bank or other financial institution professionals who distribute retail investment products from bank branches or service platforms irrespective to adhered to a certification code. The certification is also open to students, which also draws into question its applicability to and necessity for performance of the duties of a profession. The evidence in the record simply does not demonstrate how the Petitioner's "CAP-10" certification is related to performing the overarching duties of the Petitioner's profession or occupation. And the evidence in the record does not describe how the certification demonstrates the Petitioner's competency to perform their job duties. The record does not indicate what standards the certification reflect the Petitioner met. Nor does the certification indicate whether they must be periodically refreshed or renewed to ensure the professional holding the certifications maintains the competency or standards the certificate purport to reflect. So we cannot conclude that the Petitioner has a license to practice the profession or certification for a particular profession or occupation.

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

The Petitioner contended that they have commanded a salary, or other remuneration for services, which demonstrates exceptional ability. In support, they submitted their proof of income from their previous employment positions and documentation reflecting the average salary of general managers in banks in Brazil. But the record does not reflect the salary or remuneration expected for individuals of exceptional ability performing duties comparable to those the Petitioner intends to undertake as a financial analyst. There is no evidence in the record which would permit us to evaluate the duties a

financial analysts of exceptional ability would perform for the salary and their remuneration as a point of comparison. And the broad job descriptions and job titles of bank managers at Brazilian contained in the materials the Petitioner submitted did not readily correspond to the description of services and duties the Petitioner had described for their proposed endeavor. So we agree with the Director that the Petitioner has not met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) because we cannot evaluate from information in the record whether the Petitioner's salary or remuneration demonstrated their exceptional ability.

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

We do not agree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. The Petitioner's membership in the Trade Union of Employees in Bank and Financial Establishments is not sufficient evidence of membership in a professional association. The Trade Union of Employees in Bank and Financial Establishments is not a professional association. It is a trade union. A trade union is typically an organized association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests. The record does not sufficiently describe the composition of the union and whether it is composed of professionals or employees at all levels of employment at bank and financial establishments. Consequently, the record does not convincingly describe the Petitioner's trade union as a professional association as that term is contemplated in the regulations, and we conclude the Petitioner has not met this criterion.

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)(F).

The Petitioner submitted several support letters/letters of recommendation, certificates, and a picture of a physical award statue to document the recognition of their achievements and significant contributions to their field.[2]

The evidence the Petitioner submits does not meet the standard of proof because it does not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement or significant contributions should show expertise significantly above that ordinarily encountered in the field.

The Petitioner's letters of recommendation contain complimentary statements about the Petitioner's performance of their duties that the Petitioner would like us to conclude are recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these are noteworthy as achievements and significant contributions. For example, a letter in the record credits the Petitioner with coordinating the management of a team of over 40 employees monitoring 30,000 customers. But the record does not sufficiently characterize how this demonstrates that the Petitioner's expertise in financial analysis is above that ordinarily

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

encountered in their field, especially when the duties of this position did not correspond to those traditionally performed by financial analysts.

In another letter, the Petitioner's employment as a personal relationship manager required that he be "responsible for the administration portfolio of high-income and qualified customers of the branch." The letter identified "qualified customers" to those with a high net worth. Aside from the Petitioner's letter, there is no description in the record of the duties of the personal relationship manager from the Petitioner's prior employer. Even if we consider the Petitioner's description of the personal relationship manager in the manner most favorable to them, the duties in the description were not correspondence to that of a financial analyst. And the record does not sufficient demonstrate or adequately explain how managing their prior employer's relationship with "qualified customers" reflected a utilization of tools based on the quantum method by human resources specialists is indicative of exceptional expertise or a significant achievement or contribution to the field.

And another letter writer described the how the Petitioner increased the revenues at the bank branch they were responsible for. But it is not clear in the record how the competent execution of their management duties is a significant contribution or achievement in the field demonstrating the Petitioner's expertise significantly above that ordinarily encountered in the field of financial analysis.

Whilst it can be concluded from an overall evaluation of the letters that the Petitioner submitted that they are a seasoned professional whose competence and reliability as an employee is valued and appreciated, the letters did not evidence the Petitioner's achievement or significant contributions and expertise significantly above that ordinarily encountered in the field required to demonstrate the Petitioner's exceptional ability.

And the Petitioner's workplace certificates and awards, largely issued by their previous employer in recognition of high achievement, are not evidence of the Petitioner's exceptional ability. Although they demonstrate the Petitioner's dedication to their profession and employment objectives, the record does not adequately describe how the certificates are reflective of an expertise above that ordinarily encountered in the field of human resources. Nor does the record sufficiently demonstrate that the certificates are evidence of significant contributions to the field or achievements in the field of human resources. So we agree with the Director that the Petitioner does not meet this ground of eligibility.

III. CONCLUSION

The Petitioner has not established eligibility in any of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). So they cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). And we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. In addition we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.