U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37384090

Date: APR. 01, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a carpenter and business owner, 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 record did not establish that a waiver of the required job offer, and thus of a labor certification, would be in the national interest. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. 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 the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

[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).

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *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,[2] 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.

Id.

II. ANALYSIS

The Petitioner is the owner of [redacted], "a furniture manufacturing plant" with "20 years of company presence in [redacted], Brazil, and 4 years in London." The Petitioner endeavors to expand his business to the United States through [redacted] while fulfilling the role of owner and chief executive officer. [redacted] "aims to offer a range of sustainable furniture products to individuals and business[es] in the U.S."

A. Exceptional Ability

The Petitioner claims his qualification for the underlying EB-2 visa classification as an individual of exceptional ability. The Petitioner must meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined the Petitioner did not meet at least three of the six criteria, as he only established two: 1) an official academic record showing he 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, and 2) evidence in the form of letter(s) from a current or former employer(s) showing that he has at least ten years of full-time experience in the occupation for which he is being sought. On appeal, the Petitioner maintains he has met at least three of the criteria, as he also established: 1) a license to practice the profession or certification for a particular profession or education, 2) evidence he commanded a salary or other renumeration for services that demonstrates his exceptional ability, and 3) evidence of recognition for his accomplishments and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

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

The Director determined the Petitioner did not establish eligibility for this criterion. The Director noted the Petitioner endeavors to work as a business owner and expand this business into the U.S.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

market. However, the Director indicated that "a license or certification is not needed to be the CEO of one[']s company."

On appeal, the Petitioner acknowledges there is no "CEO license" required for individuals to act as chief executive officer but asserts "this senior position typically necessitates a combination of qualifications, relevant experience, and demonstrated leadership capabilities." In order to demonstrate "strong evidence of [his] qualifications in a comparable capacity," the Petitioner submitted his 2017 registration with the Commercial Board of the State of [redacted] and his 2022 certificate of incorporation for a private limited company in England and Wales.

We concur with the Director that the record below did not contain a license or certificate for the Petitioner to act as the chief executive officer for the expansion of his business into the United States. And as stated, the Petitioner acknowledges that such licensure does not exist for this profession. Though we note the registration and certificate of incorporation submitted by the Petitioner on appeal and their relevance to the Petitioner's work, they similarly do not purport to be licenses or certifications that would satisfy this criterion. Consequently, the Petitioner has not met this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

2. *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).

The Director determined the Petitioner did not establish eligibility for this criterion. The Director acknowledged the Petitioner provided his personal income and tax information, in addition to comparative average salary documentation. However, the Director found that merely earning more than the average does not sufficiently demonstrate the Petitioner's salary for services is for exceptional ability. The Director also noted the comparative average salary documentation focused on the salary of a woodworker/carpenter rather than the owner of a business, such as the Petitioner.

On appeal, the Petitioner asserts he has sufficiently demonstrated his income as a carpenter is significantly higher than average. The Petitioner argues this evidence "conclusively demonstrates" that he is an individual of exceptional ability with earnings "significantly surpassing industry averages," which "reflect a high level of skill and expertise." Specifically, the Petitioner relies upon his earnings from the years 2019-2022 in asserting his average monthly earnings, extrapolated to his average annual earnings, are significantly higher than the average salary of carpenters in both Brazil and England. In support of this assertion, the Petitioner submitted a 2021-2022 declaration of income for the Petitioner as the "Brazilian Director of [redacted]," a 2019-2020 declaration of withdrawals for the Petitioner as a "businessman" and "managing partner" of "[redacted]," a salary survey in Brazil for the occupation of carpenter, and a job site query response for a carpenter's salary in England.

The Petitioner previously asserted he "work[s] in [his] own company," [redacted] in which he "produce[s] modern and personalized furniture." While we acknowledge the record appears to indicate the Petitioner's annual salary far outstrips the average salary for carpenters, we cannot determine the accuracy of the Petitioner's claims about how his salary compares to others in his field. Specifically, we concur with the Director that the Petitioner's own position, as a combined business owner, carpenter, managing partner, and director, is not contemplated or reflected in the submitted

average salary documentation for carpenters alone. Accordingly, based on the evidence in the record, we cannot conclude he meets the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

3. *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 Director determined the Petitioner does not meet this criterion. The Director acknowledged the letters of recommendation submitted on behalf of the Petitioner. However, the Director noted "the record speaks to the [P]etitioner's qualifications, education, experience, and contributions he made to his employers, his company, and individuals with whom he was affiliated," but did not establish he "received any recognition for achievements or significant contributions to the industry or field from peers, governmental entities, or professional or business organization.

On appeal, the Petitioner asserts that his previously submitted letters of recommendation "detail [his] contributions to sustainable carpentry practices and how [his] innovations in custom furniture have significantly improved client outcomes, reduced costs, and contributed to the growth of businesses." The Petitioner contends that these letters, coupled with "extensive documentary evidence of [his] professional success and contributions" are sufficient to meet this criterion.

The record letters of recommendation speak to the Petitioner's professionalism, high level of skills, and the value his work provides. We acknowledge these letters reflect satisfaction with the services provided by the Petitioner, but they are not letters from members of his industry that indicate any recognition for the Petitioner for achievements or significant contributions to the field. Rather, they reflect the Petitioner has demonstrated his expertise and work experience in his field, in addition to the high regard he garners due to his success on previous projects. Accordingly, the Petitioner has not submitted the "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations," that 8 C.F.R. 204.5(k)(3)(ii)(F) requires.

For the reasons set forth above, the evidence does not establish the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, he has not demonstrated he has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualified for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown he is an advanced degree professional or that he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Because this issue is dispositive of the Petitioner's appeal, we will not reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Matter of Dhanasar* analytical 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).

ORDER: The appeal is dismissed.