U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37113019

Date: APR. 02, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an architect, 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 Petitioner had not established eligibility for the requested EB-2 classification and for a waiver of the required job offer, and thus of the labor certification. 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:

> (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;
>
> (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;

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

(D) Evidence that the alien 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.

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.

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 may, as matter of discretion,[1] 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 proposes to work in the United States as an architect and advance sustainable and innovative architectural projects through his company. He intends to collaborate with businesses, institutions, and government entities to address broad environmental concerns and provide services to clients that include sustainable design, educational seminars, and green building projects. The Director denied the petition, concluding that the Petitioner did not establish that he qualified as an individual of exceptional ability. The Director determined that although the Petitioner met four out of six criteria, he did not establish that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

[1] *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).

On appeal, the Petitioner argues that the Director erred in finding that he did not qualify as an individual of exceptional ability. He further contends that his proposed endeavor has national importance and satisfies the requirements set forth in *Matter of Dhanasar*. After reviewing the entire record, we adopt and affirm the Director's determination. *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 "is not only common practice, but universally accepted").

With respect to the underlying EB-2 classification, the Petitioner does not claim eligibility for classification as a member of the professions holding an advanced degree. Instead, he claims to be eligible as an individual of exceptional ability in the sciences, arts, or business. On appeal, the Petitioner agrees that he met four of the six criteria and contends that he established eligibility as an individual of exceptional ability "based [on] his efforts and letters of support with specific examples in [redacted]."

In denying the petition, though the Director recognized that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C) and (E), the Director concluded that the evidence submitted did not establish the Petitioner has attained a level of expertise significantly above others who work as architects. Additionally, the Director determined that there is insufficient evidence to show the Petitioner has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. While the Petitioner provided letters of recommendation praising him and his work and noted his efforts relating to the [redacted] in Qatar, the Director found this evidence inadequate to demonstrate significant contributions to his field. Upon a final merits determination in reviewing the totality of the evidence, the Director determined that the record did not show the Petitioner possesses a degree of expertise significantly above that ordinarily encountered as an architect, and therefore the Petitioner did not establish he meets the exceptional ability eligibility requirements.

Upon review, the Petitioner has not overcome the Director's determination and has not established his eligibility as an individual of exceptional ability. While we acknowledge the Petitioner's assertions, the record does not demonstrate how his academic record, work experience, salary, membership in professional associations, and recognition set him apart from other architects to show a degree of expertise significantly above that ordinarily encountered in his field. The Petitioner did not sufficiently demonstrate how his record compares with others with the same degree, experiences, salary, and memberships. He did not establish that his work has had an impact at a level indicative of achievements and significant contributions to the industry or field, or that he possesses a degree of expertise significantly above that ordinarily encountered in his occupation or otherwise signify exceptional ability as an architect. Although the Petitioner has satisfied four of the initial categories of evidence, the record does not demonstrate that he has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

Because the petition cannot be approved without an underlying determination that the Petitioner qualifies for EB-2 classification, we will reserve discussion of the Petitioner's national interest waiver claim under the *Dhanasar* framework.[2]

ORDER: The appeal is dismissed.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not required to make 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).