U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36807346

Date: APR. 07, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a blockchain engineer, 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.[1] *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 he is an individual of exceptional ability or that a waiver of the required job offer, and thus of the 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 satisfying 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 remuneration for services, which demonstrates exceptional ability; (E) evidence of

[1] The Petitioner does not assert eligibility as a member of the professions holding an advanced degree.

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. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2]

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 (USCIS) may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

II. EB-2 CLASSIFICATION

The Director concluded the evidence did not establish that the Petitioner satisfied at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) to show he is an individual of exceptional ability. The Director determined the Petitioner fulfilled only the official academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). On appeal, the Petitioner argues that he also meets the criteria for at least ten years of full-time experience in the occupation, salary, membership, and recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(B), (D)-(F). Upon review, we agree with the Director that the Petitioner has not established he qualifies for the underlying EB-2 classification.[4]

As evidence of membership in professional associations under 8 C.F.R. § 204.5(k)(3)(ii)(E), the Petitioner submitted a membership card with the [redacted] as well as other business-related documents for [redacted]. The Petitioner argues on appeal that the Director "overlook[ed] the diverse nature of professional associations in different fields" and that the [redacted]'s mission to support and empower game developers globally, regardless of their career stage, does not diminish its role as a professional association."

The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree

[2] 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).

[3] *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).

[4] The Petitioner submitted additional evidence with his appeal, but most of these documents were already contained in the record. While some of the evidence is new to the record, they relate to issues we reserve and do not reach in this decision.

or its foreign equivalent is the minimum requirement for entry into the occupation." The Petitioner does not claim, and the record does not show, that [redacted] required members to hold a U.S. or foreign equivalent baccalaureate degree or that its members are otherwise professionals as defined in the regulation. In fact, the Petitioner's foreign academic evaluation reflects that the Petitioner himself holds the equivalent of a U.S. associate's degree. The Petitioner, therefore, has not met this criterion.

As evidence of recognition for achievements and significant contributions to the industry under 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner points to recommendation letters from acquaintances and former employers in the record and asserts they "unequivocally illustrate" the Petitioner's significant contributions to the blockchain technology and software development fields, as well as recognition for his contributions by industry leaders.

While these letters generally praise the Petitioner's skills, knowledge, and past successes, they do not specifically demonstrate how he has been recognized for his achievements or explain how his contributions to the industry or field have risen to the level of "significant" consistent with this regulation. For instance, the letter from [redacted] described the Petitioner's role and the value of his work at [redacted]. However, the letter does not show how the Petitioner's work has impacted or influenced the field or industry in a significant manner beyond his employer. Similarly, while [redacted] expresses his admiration of the Petitioner's skills and discusses [redacted], a crypto coin that the Petitioner developed, he does not explain how the Petitioner's achievements, including his work related to this coin, has been recognized or viewed as significant to the blockchain and software development fields.

Likewise, the expert opinion letter by [redacted], an associate professor at [redacted] University, does not contain a cogent discussion of how the Petitioner qualifies as an individual of exceptional ability or contain adequate support to conclude that the Petitioner has received recognition for achievements and significant contributions to the industry or field. Instead, the Professor highlights the Petitioner's skills, repeats statements from the recommendation letters, and focuses on the Petitioner's eligibility and prospective work under the *Dhanasar* framework.

The Petitioner also provided several articles he authored or was quoted in, as well as course completion certificates. While these documents demonstrate the Petitioner's knowledge and steps taken towards professional development, they do not show his work has been significant to the industry or field. The Petitioner, therefore, has not shown he satisfies this criterion.[5]

As for the third, remaining criterion, the Petitioner does not dispute or address the Director's conclusion that the Petitioner did not submit any evidence of a license or certification for the profession or occupation, and thus has not met this requirement. 8 C.F.R. § 204.5(k)(3)(ii)(C). As he has not contested this finding, the issue has been waived on appeal. *See, e.g.*, *Matter of F-C-S-*, 28 I&N Dec. 788, 792 n.6 (BIA 2024) (declining to address determinations not challenged on appeal).

[5] With regard to the submission of comparable evidence under 8 C.F.R. § 204.5(k)(3)(iii), the Petitioner argues on appeal that the Director overlooked the "extensive documentation and expert testimonials" that reportedly established his significant achievements and recognition within the blockchain and software development fields. But aside from pointing to recommendation letters, which were already considered under this criterion, the Petitioner does not identify what "extensive documentation" submitted as comparable evidence was not considered.

Since the Petitioner has not established he meets at least three of the six regulatory criteria, we need not address the remaining criteria or conduct a final merits determination. Furthermore, because the Petitioner has not demonstrated eligibility for the underlying EB-2 classification, we need not consider whether he merits a discretionary waiver of the job offer requirement in the national interest and, therefore, reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

As the Petitioner has not met the requirements for EB-2 classification, we conclude he has not established eligibility for a national interest waiver.

ORDER: The appeal is dismissed.