U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30360871

Date: APR. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner lists his job title and occupation as "airport operations specialist." He seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability,[1] 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 that the record did not establish that the Petitioner qualifies as an individual of exceptional ability. The Director further concluded that the Petitioner had not established 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 because the Petitioner did not establish that he meets the statutory criteria of the EB-2 immigrant classification. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve any appellate arguments regarding whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. *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).[2]

[1] The Petitioner has maintained that he qualifies for the EB-2 immigration classification as an individual of exceptional ability, and he does not dispute the Director's conclusion that he is not eligible for the EB-2 classification as an advanced degree professional pursuant to 8 C.F.R. § 204.5(k)(2). Therefore, we will limit our discussion to the Petitioner's claim that he qualifies for the EB-2 classification as an individual of exceptional ability.

[2] The Director noted that the Petitioner did not meet the criteria of establishing national importance. On appeal, we note that the evidence of record does not appear to show that the Petitioner could demonstrate national importance or meet the requirements of a national interest waiver, but have reserved further discussion of these issues.

I. LAW

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).[3]

(A) An official academic record showing the noncitizen's possession of 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) Letters from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the proposed occupation;
(C) A license to practice the profession or certification for the profession or occupation;
(D) Evidence of the noncitizen's receipt of a salary or other remuneration demonstrating exceptional ability;
(E) Proof 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.[4] 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 a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *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[5], 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.

[3] 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).
[4] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[5] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver are discretionary in nature).

II. ANALYSIS

The Petitioner originally claimed that he satisfied the five criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(D) and (F), subsequently altering that claim to include all six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). In a supporting cover letter, the Petitioner stated that he has worked for the same government-owned company, [redacted] for 19 years and that over 10 of those years were "in his current occupation as an airport operations professional." This position title, however, does not match the one listed in parts five and six of Form I-140, Immigrant Petition for Alien Workers, where the Petitioner stated that his position title and occupation is that of "airport operations specialist." The Petitioner did not explain the practical difference between the two position titles, despite arguing on appeal that "comparing his salary to that of an airfield operations specialist is inappropriate" considering his employment verification letter, which states that he worked as an "airport services *professional*." (Emphasis added in original). We further note that the Petitioner did not reconcile the apparent inconsistency between the occupation and position title listed in the petition form and the position title he now claims on appeal, which matches the one listed in a previously submitted employment verification letter. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record through submission of independent, objective evidence).

In denying the petition, the Director determined that the only two requirements the Petitioner satisfied were those of 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), the criteria pertaining to the Petitioner's academic record and years of full-time employment, respectively. The Director therefore concluded that the Petitioner did not show that he satisfied the necessary criteria to qualify for classification as an individual of exceptional ability. As noted above, the Petitioner asserts that he satisfied all six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), and he does not explain why he claimed only five criteria at the time of filing. We conclude that the record supports the Director's adverse findings regarding the four criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C)-(F) and will address each criterion in the discussion to follow.

First, we will discuss the Petitioner's claim that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which requires him to provide evidence of a license or certification for his profession or occupation. The Director determined that although the Petitioner provided a copy of his pilot's license, he did not provide evidence that a license is required for his endeavor, which is in the field of airport maintenance.

On appeal, the Petitioner asserts that his years of experience as a licensed pilot resulted in his gaining "a wider awareness of the importance of effective management of airport operations" and points out that his license was issued by ANAC, the regulatory agency that inspects civil aviation activities and airport infrastructure in Brazil. However, even if the Petitioner's experience as a pilot positively impacted his subsequent work in the field of airport operations, the record contains no evidence that a pilot license was required for such work. Likewise, ANAC's regulatory oversight of civil aviation activities does not serve as evidence that there is a licensing or certification requirement for the Petitioner's occupation of "airport operations specialist."

The Petitioner also argues that he has "a multitude of certifications that are prerequisites for practicing his profession." As evidence of these "multitude of certifications" the Petitioner lists seven courses that he completed in an eight-year period, with the earlier course dating back to April 2011 and the most recent having been completed in 2019. However, the Petitioner has provided no evidence that certifications were issued after his completion of these courses, or the various other courses he listed in a supporting

exhibit.[6] Accordingly, the Petitioner has not demonstrated that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

Next, we will discuss the Petitioner's claim that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), which requires evidence that he received compensation demonstrating exceptional ability. In the denial, the Director discussed the Petitioner's tax returns from 2019-2021, noting that the 2020 tax return shows that the Petitioner's wages of R$54,471.78 were paid by [redacted] and that only a health aid indemnity of R$9,327.92 and cash bonus of R$3,466.89 were paid by Infraero, the Petitioner's claimed employer of over 19 years. Although the Director acknowledged the Petitioner's 2019 and 2021 tax returns showing that [redacted] compensated him R$94,255.63 in 2019 and R$46,149.74 in 2021, such wages were not deemed as demonstrating that the Petitioner commanded compensation exhibiting exceptional ability. The Director pointed out that according to open source materials, the Petitioner's salary fell within the range listed for airfield operations specialists. Further, noting that the Petitioner referred to himself as an airport operations specialist in prior submissions, the Director questioned the relevance of the Petitioner's submission of a wage assessment notice discussing the average salary of an airport service agent.

On appeal, the Petitioner challenges the Director's analysis, highlighting that a previously submitted employment verification letter from [redacted] "explicitly designates the [Petitioner] as an Airport Services *Professional* rather than a *Specialist*" and that it is therefore "inappropriate" to compare the Petitioner's salary to that of an airfield operations specialist. (Emphasis contained in original text). However, the Petitioner has not provided evidence documenting the claimed distinction between a "professional" and a "specialist" in the field of airport operations, even though the core of his argument hinges on there being a practical distinction between these two terms within the context of his occupation.

Moreover, if, as claimed on appeal, there is a practical difference between a "professional" and a "specialist" in the field of airport operations, the Petitioner would have to resolve the multiple inconsistencies in the record, which contains a mix of documents that used both terms when referring to the Petitioner's occupation and former position with [redacted] As previously discussed, the petition form refers to the Petitioner's position title and occupation as that of "airport operations specialist," which is consistent with the job title listed in the Petitioner's uncertified Form ETA 750, and a statement submitted in response to a request for evidence (RFE) where the Petitioner referred to himself as "an Airport Operations Specialist with over 19 years of experience." However, as noted above, the employment verification letter pertaining to the Petitioner's position with [redacted] states that he carried out "the function of Airport Services Professional," which is the same position title used in the Petitioner's initial supporting statement and in his evaluation reports reflecting his employment with [redacted] in 2021 and 2022. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Given the inconsistencies noted above, it is unclear precisely which position the Petitioner held during his employment abroad, which thereby precludes the Petitioner from adequately showing that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

[6] The Petitioner listed a total of 41 courses that he took between 2006 and 2019. The record contains no individual certifications that correspond to any of these courses.

The Petitioner also claims that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), which requires evidence of his membership in professional associations. As noted earlier, the Petitioner did not claim this criterion at the time of filing, but rather made the argument for the first time in response to an RFE and offered no evidence to support this added claim. Instead, the Petitioner relied entirely on his previously submitted private pilot license, referring to the license as his "membership card with ANAC." On appeal, the Petitioner restates this argument, and offers no evidence to demonstrate that ANAC, a Brazilian regulatory agency overseeing civil aviation activities, is a professional association or that his pilot license, despite having been issued by ANAC, represents membership in a professional association.

Lastly, the Petitioner claims that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires evidence showing that he was recognized for achievements in and significant contributions to his industry – in this case, airport operations. In denying the petition, the Director recognized the Petitioner's submission of an employment verification letter and evaluation reports from that employer, as well as expert opinion and reference letters. While the Director acknowledged that these documents offer details about the Petitioner's employment, work ethic, and his competence in the workplace, she concluded that these submissions do not constitute evidence that the Petitioner had been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to his industry.

On appeal, the Petitioner states that he "strongly disagree[s]" with the Director's assessment of the evidence and continues to rely on previously submitted evidence, claiming that "the [] letters contain details of several of his contributions to the field of Brazilian aviation" and "go beyond" simply describing the Petitioner's "positive attributes." We note, however, that in addressing this criterion in the RFE response the Petitioner discussed only his work evaluation reports, noting that the reports consistently show his good performance in terms of "productivity, attendance, flexibility, attitude, and initiative." And despite claiming on appeal that he previously provided letters containing "details of several of his contributions to the field of Brazilian aviation," the Petitioner has not pointed to specific achievements and significant contributions that he claims were described, nor does he identify precisely which of the previously submitted letters contain the claimed information. Thus, the Petitioner has not overcome the Director's determination regarding this criterion. Because the record does not show that the Petitioner was recognized for achievements and significant contributions to his industry or field, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.