U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30626314

Date: APR. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing specialist, seeks classification as an individual 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 EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's qualification as an individual of exceptional ability or eligibility for a national interest waiver. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). An individual 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does demonstrate meeting at least three criteria, USCIS then conducts a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a 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.

II. ANALYSIS

The Director found that the Petitioner did not establish that he is an individual of exceptional ability, and as such did not establish that he qualifies for the EB-2 classification.[3] The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* framework and therefore concluded that he is not eligible for a national interest waiver.

The Petitioner's proposed endeavor is to establish and operate a retail consulting, advisory, and training company in [redacted] Florida. The Petitioner states that he is a marketing specialist and will serve automotive dealers, convenience stores, supermarkets, and other businesses to provide market research and marketing strategies services. On appeal, the Petitioner submits a brief in he asserts that he has established eligibility for the requested classification and for a national interest waiver.

A. Qualification for the EB-2 Classification

As stated above, the Petitioner asserts that he qualifies for the EB-2 classification as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2). The Director concluded that the Petitioner established only the initial criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) (possessing a degree, diploma, or certificate relating to the area of exceptional ability). On appeal, the Petitioner contends that he has established five of the six initial regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). We examine each of the criteria in turn.

> *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).

The Director determined that the Petitioner established this criterion. The record contains the Petitioner's certificate of completion and transcript for a technologist degree in retail marketing, awarded in Brazil. The record also contains a copy of the Petitioner's certificate and transcript for a

[2] *See also 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).

[3] The Petitioner does not claim to qualify for the EB-2 classification as an advanced degree professional.

lato sensu postgraduate course in strategic business management, also awarded in Brazil. As such, we agree with the Director that the Petitioner has obtained a degree, certificate, or similar award from an institution of learning related to retail marketing.

As such, the Petitioner has established this criterion.

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director concluded that the Petitioner did not establish this requirement, noting that the employment letter submitted does not include a job description or the number of hours worked. Additionally, the Director found that the other evidence that the Petitioner asserts supports this claim, such as a credential evaluation and expert opinion letter, were insufficient.

On appeal, the Petitioner claims that, in response to the Director's request for evidence (RFE), he submitted a new employment letter from his prior employer that provides a description of his job duties and confirms that his position was full-time. The Petitioner also states that he has submitted this letter again on appeal.

However, upon review of the record, we note that it does not contain the claimed new employment letter. Rather, the Petitioner resubmitted the original employment that states only his employment start and end dates and that he held the job title of "buyer III."

The regulations require that the evidence used to establish this criterion be "in the form of letter(s) from current or former employer(s)." Additionally, while the regulation does not require that the employment letter contain a job description, the evidence must demonstrate that the experience is "in the occupation." Because the Petitioner's employment letter states only the job title of "buyer III" and does not describe the Petitioner's job duties, we conclude that the letter does not provide a sufficient description of this job to establish that it relates to a retail marketing occupation or the occupation of marketing specialist. Additionally, the letter does not state that the employment was full-time. Therefore, we conclude that the Petitioner has not established his years of full-time experience in the occupation as required by the regulation.

As such, the Petitioner has not established this criterion.

> *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 Petitioner did not submit evidence in support of this criterion. As such, the Petitioner has not established this criterion.

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 Director concluded that the Petitioner did not establish this criterion because, although he provided copies of his income tax returns for 2019 to 2021 and asserted that his income exceeded the average salary, the Petitioner did not provide evidence to establish the average salary statistics used as a comparison point.

On appeal, the Petitioner contends that he has provided a source to establish the average salary for a marketing specialist in Brazil. Specifically, the Petitioner provides a URL for a website. The Petitioner contends that this website is "one of the most prestigious and trusted job and salary platforms in Brazil," and should "carry significant weight and credibility." However, the Petitioner did not provide any documentary evidence to establish the average salary of a marketing specialist in Brazil. Additionally, the website appears to be in Portuguese and the Petitioner did not provide a translation of the information contained on the website.[4] Finally, the Petitioner did not provide evidence to support his claim about the reliability and prestige of the website's information.

The Petitioner has not provided documentary evidence with a certified English translation, if necessary, to establish the claimed average salary amounts stated. We conclude that the Petitioner's unsupported assertion is not sufficient to meet his burden of proof. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Although the Petitioner cites a website in support of this claim, the Petitioner did not include in his filing documentary evidence from a credible source, with a certified English translation if necessary. This is insufficient, because *Matter of Chawathe* contemplates that a petitioner submit "relevant, probative, and credible evidence" to meet his burden of proof. *Id.* at 376.

As such, the Petitioner has not established this criterion.

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

The Director concluded that the Petitioner did not establish this criterion. The Director found that, although the Petitioner demonstrated that he is a member of the American Marketing Association, the Petitioner did not provide sufficient evidence to establish that this organization qualifies as a professional association.

On appeal, the Petitioner contends that the American Marketing Association is "one of the most prestigious and recognized marketing associations in the world" and that it "has been a leading voice in marketing for over a century." The Petitioner also states that the organization "has strict membership criteria that requires applicants to possess a significant level of marketing experience or education" and that his admission to the organization is "a testament to [his] competence and experience in the field of marketing."

[4] Any document containing foreign language submitted to USCIS must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

However, the record does not contain evidence to support these claims. The Petitioner did not submit evidence to demonstrate the specific requirements to gain membership in the organization. This criterion requires evidence of membership in a professional association, and the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a United States bachelor's degree or foreign equivalent for entry into the occupation. As such, the Petitioner has not established that this organization qualifies as a "professional association" within the meaning of the regulations. Since the Petitioner has not provided evidence to establish that this organization requires its members to be professionals as defined in the regulations, he has not met his burden to establish that it qualifies as a professional association.

As such, the Petitioner has not established 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 letters of recommendation in support of this criterion. The Director concluded that, although the letters praise the Petitioner's abilities, experience, and positive personal characteristics, they did not specify how he has been recognized for achievements and significant contributions to the industry or field.

On appeal, the Petitioner maintains that the letters of recommendation "highlight [his] competence and how well positioned [he] is to make significant advances" in his proposed endeavor. The Petitioner asserts that the letters positively describe his negotiation and analysis skills, his communication skills, his competency in marketing strategies, and his success in driving business growth.

We agree that the letters of recommendation positively describe the Petitioner and his knowledge and skills. However, upon de novo review, we agree with the Director that they do not describe specific achievements or significant contributions to the marketing field by the Petitioner, nor do they describe the Petitioner as receiving such recognition from peers, governmental entities, or professional associations. Rather, the letters describe only the Petitioner's contributions to his clients and customers' businesses.

As such, we conclude that the Petitioner has not established this criterion.

Therefore, the Petitioner has established that he satisfies only one of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination to evaluate whether he has achieved the degree of expertise required for exceptional ability classification. As such, the Petitioner does not qualify as an individual of exceptional ability. Having determined that the Petitioner does not qualify as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether he is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory 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 the applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(3). Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a national interest waiver. We reserve our opinion regarding whether the Petitioner has satisfied any of the three prongs of the *Dhanasar* analytical framework.

ORDER: The appeal is dismissed.