U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30628710

Date: APR. 15, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an Oracle EBS consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts or business. *See* 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Petitioner had not established eligibility for the underlying EB-2 classification as an advanced degree professional or an individual of exceptional ability. In addition, the Director concluded that the Petitioner did not establish eligibility for a national interest waiver. The matter is now before us on appeal. 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 visa 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. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree

is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual meets the requirements for exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether the petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then demonstrate 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 that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner shows:

- 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 Petitioner, an Oracle EBS consultant, states that his proposed endeavor is "to serve as a functional consultant for Oracle E-Business Suite Supply Chain Management" and "serve as an expert technical consultant who will understand customer needs and develop customized systems using tools such as PLSQL, Oracle Forms, Oracle Reports, XML Publisher, API's, Open Interfaces, Alerts, Forms Personalization, and AIM."

In denying the petition, the Director concluded that the Petitioner had not established eligibility for the underlying EB-2 classification as either an advanced degree professional or an individual of exceptional ability, and further determined that the Petitioner had not established that a waiver of the job offer, and thus of a labor certification, was in the national interest. On appeal, the Petitioner asserts

[1] *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 to be discretionary in nature).

that the Director's decision was erroneous, specifically contending that he qualifies as an individual of exceptional ability and has established eligibility for a national interest waiver.

A. Qualification for the EB-2 Classification

We will first address the threshold requirement that the Petitioner must qualify for classification as either an advanced degree professional or an individual of exceptional ability under Section 203(b)(2)(B)(i) of the Act.

The Director concluded that the Petitioner did not qualify for the EB-2 classification as an advanced degree professional. On appeal, the Petitioner does not acknowledge or rebut the Director's specific finding on this issue, and thereby abandons this issue. An issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

The Director also concluded that that the Petitioner did not qualify for the EB-2 classification as an individual of exceptional ability. Specifically, the Director determined that he satisfied only two of the six criteria; namely, the criterion related to an official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the criterion related to ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B). On appeal, the Petitioner contends that he also meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) pertaining to recognition for achievements and significant contributions to the industry or field. After reviewing the evidence in the record, we find that the Petitioner has not satisfied at least three of the six initial evidentiary criteria and is not otherwise eligible for the underlying classification.

Upon review, we agree with the Director's determination that the Petitioner has satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), as the record contains a copy of the Petitioner's official academic record as well as letters from former employers verifying that he has over ten years of full-time experience in the occupation. As explained below, however, we conclude that the Petitioner has not met any of the remaining evidentiary criteria.

> *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 relating to this criterion or assert eligibility for this criterion. As such, the Petitioner has not established eligibility under this criterion.

> *Evidence that the [individual] has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner does not address or contest on appeal the Director's finding that he did not demonstrate that he commanded a salary demonstrating his exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(D). Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. at 336 n.5 (citing *Matter of R-A-M-*, 25 I&N Dec. at 658 n.2)).

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

The Petitioner did not submit evidence relating to this criterion or assert eligibility for this criterion. As such, the Petitioner has not established eligibility under 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 did not initially claim to have satisfied this criterion. In denying the petition, the Director observed that the Petitioner had not submitted evidence related to this criterion. On appeal, the Petitioner cites to several previously submitted letters and asserts they serve as evidence that he meets the criterion.

The Petitioner claims that his professional experience spans two decades and has enabled him to become an expert functional consultant regarding implementation and optimization of a wide variety of modules included within Oracle's E-Business Suite. He notes that his expertise and professionalism has been recognized by a number of his former colleagues as set forth in their letters of recommendation. The letters do not, however, adequately address how the Petitioner has garnered recognition for achievements and significant contributions to his industry or field by peers, governmental entities, or professional or business organizations.

Several letters are written by former colleagues of the Petitioner, who worked with him either on projects or at the same company. For example, letters from [redacted] and [redacted] recall working on projects with the Petitioner and state that his work was of "high value" and impacted their own career paths. A letter from [redacted] recounts the career of the Petitioner while employed at [redacted] And letters from [redacted] and [redacted] attest to the Petitioner's strong reputation in the industry despite not knowing or working with him personally.

While these letters contain general praise for the Petitioner's expertise and work ethics, they do not indicate that the Petitioner's contributions to the field go beyond being a dedicated and competent colleague and employee. For example, [redacted] references the Petitioner's talent and character in her letter, but does not provide specific examples of achievement or contribution beyond listing his employment history within the company. The letters show that the Petitioner has experience as a developer within the information technology industry, but the record lacks evidence demonstrating that this represents a significant achievement or recognition in the field. Although the letter-writers commend the Petitioner's skills, without more detailed explanations about the Petitioner's specific contributions to the industry or field that are supported by documentary evidence, the letters in the record do not sufficiently support the Petitioner's assertion that he has met this criterion. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner also points to copies of professional services agreements and invoices for services rendered as evidence that he "is an accomplished and respected information technology professional." However, he has not explained how performing services in his field constitutes recognition for achievements and significant contributions to the industry or field. In other words, simply doing one's

job constitutes neither recognition for achievements or contributions, nor do these activities appear to have any effect on the industry or field. Similarly, the Petitioner's assertion that he has been recruited for the position of senior lead consultant by [redacted] a "diversified conglomerate" with "renowned global companies" is not sufficient to demonstrate that this is a significant achievement or recognition in the field. Although this evidence demonstrates his commitment to and success in his chosen career, it does not constitute evidence of recognition for achievements and significant contributions to the industry or field.

Here, the Petitioner has not met his burden to establish that he has garnered recognition for achievements and significant contributions to the industry or field as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F).

For the reasons set forth above, the evidence does not establish that the Petitioner has satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and thus, we need not conduct a final merits determination. Nevertheless, we have reviewed the record in the aggregate and examined "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. While we acknowledge that the Petitioner has had a successful career in the field of information technology, he has not demonstrated exceptional ability that rises above that ordinarily encountered in his field.

B. National Interest Waiver

The remaining issue is 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. As previously outlined, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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).

III. CONCLUSION

The Petitioner has not established that he meets the requirements for EB-2 classification.

ORDER: The appeal is dismissed.