U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30624913

Date: APR. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a security management specialist, seeks employment-based second preference (EB-2) immigrant classification 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. The Director concluded that the Petitioner did not demonstrate his eligibility for the underlying EB-2 immigrant classification, or the requested 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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

8 C.F.R. § 204.5(k)(3)(ii).[1]

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[2] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they 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 the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

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

waiver petitions. Dhanasar states that USCIS may, as matter of discretion,[3] 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. at 889.

II. ANALYSIS

The Petitioner proposes to establish a security services business in the United States for which he would its general director and security management specialist. The Director found that the Petitioner did not establish eligibility for the underlying EB-2 classification as an individual of exceptional ability. The Director further found that the Petitioner did not merit a discretionary waiver of the job offer requirement in the national interest.

With respect to the underlying EB-2 classification, the Petitioner submitted evidence to meet five of the six criteria for exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Director concluded that the Petitioner only met two of the regulatory criteria, academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A) and ten years of full-time experience in his proposed occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B). However, as discussed below, we find the record does not support the conclusion that the Petitioner meets either criterion.

On appeal, the Petitioner reasserts being an individual of exceptional ability by satisfying two criteria, membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E) and recognition for achievements and significant contributions to the industry at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner does not address or contest on appeal the Director's finding that he does not meet the criterion that he has a license to practice his profession or certification for his profession or occupation under 8 C.F.R. § 204.5(k)(3)(ii)(C). Accordingly, we deem this ground to be waived.[4]

After reviewing the evidence in the record, the Petitioner has not demonstrated satisfying at least three of the six initial evidentiary criteria for being an individual of exceptional ability and is not otherwise eligible for the requested benefit.[5]

[3] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third Circuit Court in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] 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)).

[5] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

> An official academic record showing that the individual 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 the Petitioner met this criterion but did not provide an explanation for the determination. To meet this criterion, the Petitioner submitted copies of three foreign language diplomas with English translations. In a request for evidence (RFE), the Director acknowledged receipt of the foreign language documents with the English translations but notified the Petitioner that the documents could not be considered because they lacked certifications from the translator that the translations were complete and accurate, and that the translator was competent to translate from the foreign language into English. The Director requested documentation to fulfill the criterion and that any foreign language document be accompanied by full and complete English translation and the requisite translator certification. Although the Director specifically requested these documents in the RFE, the Petitioner only indicated in his response that he was submitting a translator certification which should be considered as a translator certification for the documents included with the initial petition. Upon review of the record, the translator certification submitted with the RFE response is unrelated to the Petitioner's foreign language diplomas, instead is a translator certification for an employment verification certificate.

The Petitioner is required to submit a copy of documents accompanied by a full English language translation. See 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. Without a certified English translation, we are unable to determine the evidence's relevance and reliability on the issue of whether the Petitioner has a degree, diploma, certificate, or similar award from a learning institution relating to his area of exceptional ability.

Had the Petitioner submitted the required English translations with the translator certification for his three diplomas, they would nevertheless be insufficient to meet the criterion. Based on the uncertified English translations, the first diploma is from the [redacted] Brazil, granting him the title of technologist of overt police and preservation of public order after completing the technologist course in overt police and preservation in 2018. The second diploma is from the [redacted] Brazil "for having concluded the Military PM Formation Course" in 2007. And the third diploma is from [redacted] Brazil for the Petitioner's completion of the full professional qualification – data processing technician for the title of data processing technician in 1997. However, the record does not include an official academic record for any of the diplomas, as required under the criterion. In addition, the record does not show that any of the diplomas are from an institution of learning or that the diplomas relate to the Petitioner's area of exceptional ability, a security management specialist. As such, even if the Petitioner submitted the requisite English translations with the translator certification, the evidence provided does not include an official academic record showing any of the diplomas are from an institution of learning relating to the Petitioner's area of exceptional ability. Therefore, the Petitioner has not established that he meets the plain language of the criterion. We withdraw the Director's finding otherwise.

Evidence in the form of letter(s) from current or former employer(s) showing that the individual 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 Petitioner relies on his experience with the [redacted] in Brazil to meet this criterion. A certificate from the [redacted] states he "took office in public office as [redacted] on June 12, 2006 . . . being exonerated on request on May 19, 2022, then in the graduation of [redacted] having as last unit the [redacted] . . . ." However, the certificate lacks sufficient details of his job duties to determine whether his experience was in the occupation being sought. In addition, the certificate does not indicate whether his work with the [redacted] was full-time, as required under the plain language of the criterion. Therefore, the certificate from the Petitioner's former employer does not show his experience was full-time or was in the occupation being sought, security management specialist.

Because the evidence provided does not demonstrate that the Petitioner has at least ten years of full-time experience in his proposed occupation as a security management specialist, the Petitioner has not established that he meets the plain language of the criterion. Therefore, we withdraw the Director's finding regarding this criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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

The Director determined that the Petitioner did not submit evidence to meet this criterion and therefore it was not met. However, the record indicates that the Petitioner submitted foreign language documents with English translations of his [redacted] identification card and a declaration from the [redacted] The record also indicates that the Director's RFE acknowledged receipt of the foreign language documents with English translations to meet the criterion but notified the Petitioner that the documents were not accompanied by the requisite translator certification. The Director requested documentation to fulfill the criterion and that any foreign language document be accompanied by full and complete English translation and the requisite translator certification. Although the Director specifically requested these documents in the RFE, the Petitioner only indicated in his response that he was submitting a translator certification which should be considered as a translator certification for the documents included with the initial petition. As discussed above, the record shows that the translator certification submitted with the RFE response is unrelated to the Petitioner's foreign language membership documents; it instead is a translator certification for an employment verification certificate.

On appeal, the Petitioner resubmits the foreign language documents accompanied by the English translation and the requisite translator certification. The Petitioner also submits laws related to persons with disabilities, however, offers no context for the purpose of these laws. His [redacted] identification is dated in 2006 and states the Petitioner's post or rank as [redacted] and his identity specifics. The declaration is dated in 2022 and states that the Petitioner is enrolled as a member of the [redacted] since 2012 and is "up to date with his associative contribution."

This criterion requires evidence of membership in a professional association. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The record does not show that either the [redacted] is comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that it otherwise constitutes a professional association. Therefore, the Petitioner has not demonstrated his membership in a professional association 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 Director did not consider the Petitioner's documents submitted for this criterion because the foreign language documents and English translations were not accompanied by the requisite translator certification. On appeal, the Petitioner resubmits several letters of recommendation, however, only three of the foreign language letters are accompanied by English translation and the requisite translator certification. The other letters submitted on appeal will not be considered because they are in a foreign language and are not accompanied by either the English translation or the translator's certification. See 8 C.F.R. § 103.2(b)(3).

The Petitioner maintains that the letters "confirm [his] unique expertise, describing the positive impact of [his] area of expertise." The letters are from the Petitioner's former colleagues and generally attest to him being a committed and knowledgeable member of the [redacted] While the letters show that the Petitioner was a professional and committed member of the [redacted] and his former colleagues value his work and dedication to the [redacted] they do not identify, and thus demonstrate that the Petitioner has been recognized for achievements and significant contributions to his industry or field, as required under the criterion. Therefore, the Petitioner has not demonstrated he meets this criterion.

Because the Petitioner has not established that he meets at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

III. CONCLUSION

The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the Dhanasar analytical framework and is otherwise eligible for the national interest waiver, we reserve our opinion regarding these issues. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "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).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.