U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29546999

Date: APR. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial airline pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *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 the Petitioner did not establish that he qualified for a national interest waiver through EB-2 classification as either an advanced degree professional or an individual of exceptional ability. 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.

On appeal, the Petitioner asserts the Director applied a higher standard of review than the preponderance of the evidence.[1] The Petitioner also contends that the Director "has not properly balanced the prospective benefits that the petitioner's proposed endeavor would bring to the [U.S.] and how much these benefits would contribute to the…national interests and the U.S. as a whole." The Petitioner, however, does not specify how the Director erred or what factors in the decision were erroneous.[2] The Petitioner submits a brief stating the following:

[1] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

[2] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

> We have enclosed additional evidence that demonstrates theand [sic] supports the petitioner's request for NIW classification. The petitioner has been given the opportunity to train for and is now Captain of the most modern and technologically advanced aircraft, the A350 [A]irbus.

The Petitioner supplements his brief with training completion certificates from November 2023, an updated crew license, a letter informing the Petitioner of a fleet transfer, and documentation discussing the A350 Airbus. We observe that, because the certificates post-date the filing date of the petition, they are not relevant to demonstrating the Petitioner's eligibility as this must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Izummi*, 22 I&N Dec. at 175 (stating that a petition cannot be approved at a future date after the self-petitioner becomes eligible under a new set of facts).

The Petitioner provides no evidence or arguments addressing the Director's conclusions regarding his eligibility for the underlying EB-2 classification. Therefore, we consider this issue abandoned. *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)) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing *United States v. Cunningham,* 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark,* No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director thoroughly reviewed, discussed, and analyzed the evidence as to the whether the Petitioner qualified for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability.[3] The Director determined that the Petitioner did not establish that he qualifies as an advanced degree professional and that he only met two of the necessary evidentiary requirements at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director also comprehensively discussed the evidence of the Petitioner's proposed endeavor to pilot commercial aircraft in the United States. In accordance with the framework for adjudicating national interest waiver petitions provided in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), the Director considered how the evidence submitted served to establish whether or not the Petitioner's proposed endeavor has both substantial merit and national importance.[4] While the Director determined that the Petitioner's proposed endeavor had substantial merit, the Director properly concluded that the Petitioner's endeavor did not reach a level of national importance to warrant a waiver of the job offer requirement. As discussed, the Petitioner provides no indication on appeal as to why this determination on the part of the Director was in error.

[3] *See* 8 C.F.R. § 204.5(k)(2) for relevant definitions of "advanced degree," "exceptional ability," and "profession."
[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on the three evidentiary prongs used to evaluate whether an individual qualifies for a national interest waiver.

In conjunction with the foregoing analysis, we adopt and affirm the Director's decision. The petition will remain denied.

ORDER: The appeal is dismissed.