U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32430053

Date: AUG. 1, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a cybersecurity consultant, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he 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.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] 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).

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

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 establishes eligibility for the underlying EB-2 classification, they must then demonstrate 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,[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.

II. ANALYSIS

The issues on appeal are: (1) whether the Petitioner has met his burden of proof to show that he qualifies for the EB-2 visa classification as an individual of exceptional ability and, if so, (2) whether he has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest.

The Director determined that the Petitioner met three out of four claimed categories of evidence for classification as an individual of exceptional ability, specifically: ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B), license to practice at 8 C.F.R. § 204.5(k)(3)(ii)(C), and membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E). Having found that the Petitioner satisfied at least three criteria, the Director conducted a final merits determination but concluded that the Petitioner did not show he has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In reaching this conclusion, the Director found that although the Petitioner has had a successful career in the cybersecurity field, was a certified ethical hacker and a member of ISC2 (association for IT security professionals), and held both a Certified Information Security Systems Professional (CISSP) certificate and a GIAC enterprise Vulnerability Assessor certificate, he did not show that he had any skills, certifications, or licenses not commonly required to work in the cybersecurity and IT fields. Specifically, the Director observed that as of late 2023 ISC2 had over 600,000 members and the only requirement to join was payment of annual fees; while this was sufficient to satisfy the membership in professional associations criterion in 8 C.F.R. § 204.5(k)(3)(ii)(E), it did not demonstrate exceptional ability or a degree of expertise above that ordinarily encountered in the cybersecurity and IT security field. The Director further found that the Petitioner did not provide persuasive evidence to establish that the requirements for obtaining CISSP certificate – passing an exam and at least five years of full-time paid work as a security analyst – demonstrated exceptional ability. Lastly, the

[3] *See 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 is discretionary in nature).

Director acknowledged the Petitioner's claim that only 7% of U.S.-based cybersecurity professionals held CISSP certificates but found that this claim was neither corroborated by evidence nor adequate to show how possessing a certification that one in 15 cybersecurity professionals also possessed pointed to his exceptional ability in the field.

The Petitioner asserts that the Director failed to properly consider all of the evidence he presented in response to the notice of intent to deny (NOID). He claims that this evidence confirms the significance of his ISC2 membership and the Certified Ethical Hacker (CEH) [redacted] Award, as well as the prestigious reputation of the CISSP certificate in the cybersecurity field. We acknowledge the Petitioner's assertions. Nevertheless, upon review of the record before us we agree with the Director that the Petitioner has not demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business, as required under 8 C.F.R. § 204.5(k)(2).

As an initial matter, the record does not support the Petitioner's contention that the Director did not consider all evidence relevant to his exceptional ability claim in the final merits determination. To the contrary – the denial includes a discussion of the Petitioner's professional certifications, successful career, and ISC2 membership, as well as a reasoned explanation why this evidence was not sufficient to show that the degree of his expertise is significantly above that ordinarily encountered in the in the cybersecurity field.[4]

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual. Given the high level of expertise required to qualify for the EB-2 immigrant classification as an individual of exceptional ability, a petitioner must demonstrate that they are above others in the field; qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered. *See generally id.* The mere possession of a degree, diploma, certificate or similar award from a college, university, school, or other institution of learning is not by itself considered sufficient evidence of exceptional ability. *See generally id.*

According to the previously provided evidence, ISC2[5] is a non-profit organization which specializes in training and certifications for cybersecurity professionals, including CISSP certification. Although the Petitioner states on appeal that the documentation he submitted shows that ISC2 membership requires more than paying annual fees, he does not point to any specific piece of evidence in support of this statement. The evidence in the record concerning ISC2 consists of information from the organization's website indicating that "ISC2 certifications are accredited, recognized and endorsed by leading organizations, government agencies, academic institutions and industry bodies," and multiple pages from the same website identifying those entities. It does not include information about any specific ISC2 membership requirements. As the Petitioner does not submit any additional evidence on appeal, we conclude that the record remains insufficient to show that his membership in ISC2 evinces a degree of expertise significantly above that ordinarily encountered in the cybersecurity field.

[4] We note that "so long as [USCIS] has given reasoned consideration to the petition, and made adequate findings, we will not require that it address specifically each claim the petitioner made or each piece of evidence the petitioner presented." *Ren v. USCIS*, 60 F.4th 89, 97 (4th Cir. 2023); *see also Larita-Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (joining the Seventh and the Federal Circuit Courts of Appeals in presuming that the Board of Immigration Appeals reviewed all of the evidence of record and holding that the burden to overcome this presumption rests with the noncitizen).
[5] Referred to in the supporting documentation as both ISC2 and (ISC)².

The Petitioner's CISSP certificate reflects that in 2021 the (ISC)² Board of Directors awarded him the CISSP credential stating that "having met all of the certification requirements, which include the professional experience prerequisite, adoption of the (ISC)² Code of Ethics, and successful performance of the required competency examination, subject to recertification every three years, [he] is entitled to all of the rights and privileges associated with this designation, as defined in the (ISC)² bylaws." In addition, the Petitioner previously submitted a letter from the president of an ISC2 local chapter, who writes that CISSP is known among cybersecurity professionals and within the industry as the most challenging certification due to stringent requirements set by ISC2; specifically, at least five years of full-time security work experience in two or more of the ISC2 information domains, and a four-hour exam. The president explains that "given the strict criteria and difficult exam there are currently only about 160,000 cybersecurity professionals worldwide that have obtained the CISSP certification from ISC2" and that it is "the most globally recognized certification in the information security marker as it validates an information security professional's deep technical and managerial knowledge and experience to effectively design engineer, and manage the overall security posture of an organization. She adds that "by obtaining the certification [the Petitioner] is in good company amongst the top cybersecurity professionals in the field, globally."

On appeal, the Petitioner references previously provided resumes of other cybersecurity professionals as evidence that CISSP is not commonly held by individuals working in the field. However, the Petitioner's self-selection of the resumes of other cybersecurity professionals does not substantiate his assertion that the CISSP is not commonly held by others working in the field. The Petitioner did not identify the selection process for the inclusion of these particular resumes within his submission to establish how representative they are of the credentials held by those working in his industry. Nor has he presented an independent, statistically valid analysis of the credentials held by others in his industry to support his assertions. As noted above, an ISC2 official indicates that about 160,000 individuals hold this credential which, without more, does not suggest that the CISSP certification is an uncommon credential to obtain by those working in the cybersecurity field.

The Petitioner also provided a copy of the Global Information Assurance Certification (GIAC), he obtained in November 2021, which reflects that he "has met the necessary requirements and demonstrated a mastery of the subject matter and security skills to earn GIAC Enterprise Vulnerability Assessor – GEVA." The accompanying printout from the GIAC website indicates that GEVA certification "is focused on validating technical vulnerability assessment skills and time-tested practical approaches to ensure security across the enterprise" and that the "GEVA-certified practitioner will be capable of handling threat management, comprehensibly assessing vulnerabilities, and producing a vigorous defensive strategy from day one."

We do not dispute that the CISSP and GEVA certificates are evidence of the Petitioner's advanced knowledge and technical skills; however, he has not demonstrated how these training certificates sufficiently set him apart from other cybersecurity professionals to show a degree of expertise at a level significantly above that ordinarily encountered in his field.

The record also includes two letters from EC-Council: one congratulating the Petitioner on being a Certified Ethical Hacker, the other informing him that he has successfully progressed to the final round of the CEH [redacted] 2021 and is now [redacted]

[redacted] While we acknowledge that both the certification and being a CEH [redacted] finalist are considerable professional achievements, the Petitioner has not provided sufficient information and evidence to demonstrate that these accomplishments are so significant that they place him well above other cybersecurity professionals.

In sum, although the Petitioner's training certificates and CISSP and CEH credentials indicate that he may possess better than average qualifications to work as a cybersecurity professional, he has not demonstrated that his specialized training, professional development, and ISC2 membership considered individually and cumulatively evince a degree of expertise significantly above that ordinarily encountered in the IT security field.

Consequently, although the Petitioner has satisfied at least three of the initial regulatory categories of evidence, the record as a whole, including the documentation discussed above, remains insufficient to show that he has achieved a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). As such, he has not demonstrated that he is an individual of exceptional ability.

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 stated, to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner does not claim that he is an advanced degree professional, and he has not met his burden of proof to show that he has achieved the level of expertise required for exceptional ability classification. Thus, he has not established eligibility for the underlying EB-2 immigrant classification. Because 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) (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 an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met his burden of proof to establish that he has attained a level of expertise required for EB-2 classification as an individual of exceptional ability. He has therefore not demonstrated that he meets the threshold requirement for a national interest waiver, and his petition will remain denied.

ORDER: The appeal is dismissed.